MARKET CONDUCT EXAMINATION REPORT

AS OF DECEMBER 31, 1997

STEWART TITLE GUARANTY COMPANY

1980 POST OAK BOULEVARD, SUITE 800
HOUSTON, TEXAS 77056

Prepared by Duane G. Rogers, esq. & J. Reuben Hamlin, esq.
independent contractors working in conjunction with the
Colorado Department of Regulatory Agencies
Division of Insurance

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(7/22/99)

Duane G. Rogers, Esq.
&
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners
Working in Coordination with
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202
(303) 894-7499

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June 22, 1999

The Honorable William J. Kirven III
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner:

In accordance with § § 10-1-203 and 10-3-1106, C.R.S., an examination of selected general business, rating, underwriting and claims practices of the title insurance business of Stewart Title Guaranty Company has been conducted. The Company's records were examined at its corporate offices located at 1980 Post Oak Boulevard, Houston, Texas 77056.

The examination covered a one-year period from January 1, 1997 to December 31, 1997.

A report of the examination Stewart Title Guaranty Company is herein respectfully submitted.

Duane G. Rogers, Esq. &
J. Reuben Hamlin, Esq.
Independent Market Conduct Examiners

MARKET CONDUCT
EXAMINATION REPORT
OF
STEWART TITLE GUARANTY COMPANY

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COMPANY PROFILE

Stewart Title Guaranty Company, hereinafter referred to as "the Company", is a wholly owned subsidiary of the publicly traded Delaware Corporation, Stewart Information Services Corporation (SISCO). The Company is authorized to write title insurance coverage in Colorado and was first licensed in the State of Colorado in 1957.

In 1956, the Company made its first entrance into markets outside of Texas. In 1970, SISCO, the Company's holding company, was established. With the well-established Stewart Title Guaranty Company as its principal subsidiary and financial anchor, SISCO held a public offering of its stock in March 1972. Since its initial offering, the Company has grown and currently has over 3,700 agents insuring property in all 48,[1] the District of Columbia, Guam, Northern Mariannas (Saipan), Canada and Mexico.[2]

As of December 31, 1997, the Company reported $16,135,497 in direct premiums in Colorado.[3] In 1997 the Company had 27 agents operating in different locations throughout Colorado. Approximately one-half of those agents were affiliates and the other half operated as independent agencies. Almost 60 % of all direct premium reported by the Company is attributable to four of its largest affiliated agencies.[4]

[1] Properties are insured through a subsidiary in New York and Iowa properties are insured through special procedures utilized outside Iowa.

[2] Mexico coverage is limited to issuing title insurance policies to non-Mexican purchasers of Mexican real estate.

[3] Figure representing direct premium written provided by the Company as reported in its Form 9 of its annual statement.

[4] The four affiliated agencies, Stewart Title of Colorado Springs, Inc., Stewart Title of Denver, Inc., Stewart Title of Eagle County, Inc., and Stewart Title Larimer County, Inc., wrote an aggregate of $9,531,513 in direct premium (59.07%).

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law § 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct exams. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The market conduct examination covered by this report was performed to assist the Colorado Commissioner of Insurance to meet certain statutory charges by determining Company compliance with the Colorado Insurance Code and generally accepted operating principles. Additionally, findings of a market conduct examination serve as an aid to the Division of Insurance's early warning system. The intent of the information contained in this report is to serve only those purposes.

This examination was governed by, and performed in accordance with, procedures developed by the Colorado Division of Insurance based on the National Association of Insurance Commissioners Model Procedures. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company and it s agents. The examination covers one calendar year of the Company's operations, from January 1, 1997 to December 31, 1997.

File sampling was based on review of systematically selected samples of underwriting and claims files by category. Sample sizes were chosen based on guidance from procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms. These comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample, the Company was provided a summary of the findings for that sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report, as reference to any practices, procedures, or files that manifested no improprieties were omitted.

An error tolerance level of plus or minus $10.00 was allowed in most cases where monetary values were involved, however, in cases where monetary values were generated by computer or system procedure a $0 tolerance level was applied in order to identify possible system errors.

Additionally, a $0 tolerance level was applied in instances were there appeared to be a consistent pattern of deviation from the Company's rates on file with the Colorado Division of Insurance.

This report contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following seven Company operations:

1. Advertising
2. Complaint Handling.
3. Agent Licensing.
4. Underwriting Practices.
5. Rate Application.
6. Claims Settlement Practices.
7. Financial Reporting

All unacceptable or non-complying practices may not have been discovered throughout the course of this examination. Additionally, findings may not be material to all areas which would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse nor discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations which do not reference specific insurance laws, regulations, or bulletins are presented to encourage improvement of company practices and operations and ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of eighteen issues, arising from the Company's apparent noncompliance with Colorado statutes and regulations concerning all title insurers authorized to transact title insurance business in Colorado. These eighteen issues fell into six of the seven categories of Company operations as follows:

Complaint Handling Procedures:

In the area of complaint handling, one compliance issue is addressed in this report. This issue arose from Colorado statutes and regulations which require insurers offering coverage in Colorado to adopt and implement procedures for addressing and responding to consumer complaints and requires all insurers to maintain a complete compliant register. With regard to this issue, it is recommended that the Company review its complaint handling procedures and amend those procedures to assure future compliance with applicable Colorado laws.

Agent Licensing & Appointments:

In the area of agent licensing and appointments, one compliance issue is addressed in this report. This issue arose from Colorado statutory and regulatory requirements which must by followed by insurers when appointing ans authorizing agents to solicit business on the insures behalf or otherwise act as representative of the insurer in Colorado. With regard to this issue, it is recommended that the Company review its appointment procedures and amend those procedures to assure future compliance with Colorado law.

Underwriting Practices:

In the area of underwriting, five compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued ion Colorado. The incidence of noncompliance in the area of underwriting exhibits a frequency range of 1% to 100%. With regard to these underwriting practices, it is recommended that the Company review its underwriting procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all five issues.

Rating:

In the area of rating, three compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements which must be followed whenever title policies are issued in Colorado and whenever title insurers or the insurer's agents conduct real estate or loan closing and/or settlement service for Colorado consumers. The incidence of noncompliance in the area of rating demonstrates an error frequency of 95%. With regard to the three compliance issues addressed in relation to the Company's rating practices, it is recommended that the Company review its rating manuals and procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all three issues.

Claims Practices:

In the area of claim practices, seven compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements dealing with the fair and equitable settlement of claims, payment of claims checks, maintenance of records, timeliness of payments, accuracy of claim payment calculations, and delay of claims. The incidence of noncompliance in the area of claims practices shows a frequency range of error between 4% and 40%. Concerning the seven compliance issues surrounding Company claims practices, it is recommended that the Company review its claims handling procedures and make the necessary changes to assure future compliance with applicable statutes and regulations as to all eight issues.

Special Financial Reporting Requirements:

In the area of financial reporting, one compliance issues is addressed in this report. This issue arose from specific Colorado statutory and regulatory requirements requiring title insurers to file certain financial data and to provide annual statistical justification and data to support title insurance rates used in Colorado. With regard this compliance issue, it is recommended that the Company review its annual filing procedures and make the necessary changes to assure future compliance with applicable statutes and regulations.

PERTINENT FACTUAL FINDINGS

Market Conduct Examination Report
of
STEWART TITLE GUARANTY COMPANY

PERTINENT FACTUAL FINDINGS

Relating to

COMPANY COMPLAINT HANDLING PROCEDURES

Issue A: Failure to maintain minimum standards in a record of written complaints.

Section 10-3-1104(1)(i), C.R.S., requires all insurance companies operating in Colorado to provide for complaint handling procedures and provides that:

> Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (I), "complaint" shall mean any written communication primarily expressing a grievance.

3 CCR 702-6(6-2-1) Attachment A sets forth the minimum information required to be maintained by insurance companies in their respective complaint registers as follows:

Attachment A. Minimum Information Required in Complaint Record

Column A	Column B		Column C	Column D	Column E	Column F	Column G	Column H
Company Identification Number	Function Code	Reason Code	Line Type	Company Disposition after Complaint Receipt	Date Received	Date Closed	Insurance Department Complaint	State of Origin

Examination of the Company's complaint record for 1994 demonstrated the Company has not complied with all of the requirements of Regulation 6-2-1. Specifically, the Company has not included a column in its complaint record which indicates the State of origin of the complaint, column H of the complaint record.

In addition, the Company's complaint register does not reconcile with the complaint register maintained by the Colorado Division of Insurance. Specifically, although both registers contained a single complaint, the complaint listed by the Company did not match the complaint listed by the Division. The Company's complaint register should be reconciled with the Colorado Division of Insurance's record so that the Company's complaint register contains all complaints filed against the Company during the period under examination.

Recommendation #1:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the requirements set forth in Regulation 6-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its complaint register to include the omitted information and that the Company's complaint register is in compliance with the minimal requirements of the Colorado regulation.

PERTINENT FACTUAL FINDINGS

Relating to

AGENTS LICENSING & APPOINTMENTS

Issue B: Accepting title risks from producers without making or obtaining the requisite producer appointment.

Section 10-2-415, C.R.S. provides in pertinent part:

(2) (a) The insurer shall notify the commissioner of insurance of producer appointments. Each insurer shall keep on file with the commissioner a current list of insurance producers which it has appointed to solicit business on its behalf. The insurer shall file with the commissioner a list of new appointments of insurance producers. The list may be submitted to the commissioner monthly or at such other intervals as the commissioner may prescribe. The insurer shall report all pertinent appointment information as prescribed by the commissioner, including the effective date of appointment.

(b) Subject to continuation or renewal, each insurance producer appointment shall remain in effect until:

(I) The insurance producer's license is discontinued or canceled by the insurance producer or revoked by the commissioner; or

(II) Notice of termination of the appointment is filed with the commissioner by the insurer.

The Single Producer Act cited above requires insurers to solicit business only through licensed agents and to obtain an appointment for every producer from which the Company accepts a risk.

An examination of a sample of systematically selected new business policies issued by the Company in 1997 demonstrated that, in some instances, the Company either used unlicensed agents and/or failed to acquire the appropriate agent appointment either preceding or following the acceptance of a risk from the given agent.

AGENCIES WRITING COVERAGE FOR THE COMPANY-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
31	27	11	41%

A review of the Company's 1997 Appointment Renewal Roster demonstrated that the Company failed to appoint 11 of the 27 (41%) agencies collecting premium and writing title insurance coverage for the Company during 1997.

Recommendation #2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of §10-2-415, C.R.S. In the event the Company is unable to provide such documentation the Company should be required to provide evidence demonstrating it has reviewed its procedures regarding the tracking of agent's licensing and appointments and has amended those procedures to assure future compliance with Colorado law.

The Company should also be required to reconcile a list of all producers issuing policies on the Company's behalf during 1997 with the Colorado Division of Insurance's 1997 list of producer appointments made by the Company. After reviewing and reconciling that material, the Company should be required to provide written assurances that no other agent or agency licensing or appointment violations occurred during 1997.

Finally, the Company should be required to conduct an audit designed to identify all producers the Company accepted risks from in which the Company failed to acquire the appropriate agent appointment either preceding or following the acceptance of the risk from the producer. The scope of the self-audit should be from January 1, 1997 to present. After conducting the self-audit, the Company should be required to remit any unpaid appointment fees as is consistent with the findings of the Company's self-audit.

PERTINENT FACTUAL FINDINGS

for

UNDERWRITING

Issue C: Misrepresenting the benefits, advantages, conditions, and/or terms of title insurance policies and/or failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of exceptions or exclusions to coverage related to unfiled mechanics or materialman's liens.

Sections 10-3-1104(1)(a) and (1)(a)(I), C.R.S. define an unfair or deceptive trade practice in the business of insurance as:

> (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
>
> (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states in pertinent part:

VII. CONSUMER PROTECTIONS

> L. Each title entity shall notify in writing every prospective insured in an owner's title insurance policy for a single family residence (including a condominium or townhouse unit) (i) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfiled mechanics or materialmans liens, except when said coverage or insurance is extended to the insured under the terms of the policy. . . [N]othing contained in this Paragraph L shall be deemed to impose any requirement upon any title insurer to provide mechanics or materialmans lien coverage.

The Company standard policy form contains the following general exclusionary language for all unfiled mechanic or materialman's liens:

> A. General Exceptions:
>
> 4. Any lien, or right to a lien, for services, labor, or material heretofore furnished, imposed by law and not shown by the public records.

Stewart Title Guaranty Company, STANDARD OWNER'S POLICY OF TITLE INSURANCE SCHEDULE B, § a. General Exceptions (ed. 1997).

A review of the Company's underwriting and rating manuals demonstrated that, in 1997, the Company offered coverage for unfiled mechanic's and materialman's liens. During 1997 such coverage was available through the Company via an extended coverage endorsement or by using Company endorsement 110.2 which insured over particular named exceptions.

Furthermore, review of the Company's underwriting and rating manuals, rules, and relevant memorandum demonstrate that the Company's general requirements for deletion of the standard exception contained in the Company's policy for unfiled mechanics or materialman's liens was two-fold. First, the Company required a physical inspection of the subject property in question for the purpose of determining that all improvements erected on the subject property have been completed and full payment has been tendered for those improvements. Upon completion of the inspection and determination of the completion and full payment of the improvements erected on the subject property, the Company also required an affidavit be executed by the record owner of the subject property stating that there were no improvements within the mechanic's lien period as prescribed by applicable Colorado law (4 months).

The following sample demonstrated that, although the Company offered coverage for unfiled mechanic's and materialman's liens, in some instances the Company failed to make the appropriate written disclosure regarding its general requirements for such coverage when issuing title policies of insurance associated with the title transfer of single family residences, condominiums or townhouses in Colorado:

NEW BUSINESS TITLE POLICIES ISSUED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
35,994	100	35	35%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, showed 35 instances (35% of the sample) wherein the Company issued title insurance policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. Each policy excepted coverage for unfiled mechanics or materialmans liens, a coverage offered by the Company by endorsement, however, in each instance the Company failed to provide the insured with the requisite written notice regarding the availability and prerequisites of such coverage as required by 3 CCR 702-3 (3-5-1).

The 35% error frequency reported here is diminished by the fact that only 35 of the 100 policies reviewed were subject to this standard and required the written disclosure pertaining to the unfiled lien coverage. Specifically, only 35 of the 100 files reviewed were owner's title insurance policies insuring single family residences that did not have Owner's Extended Coverage or an endorsement removing the general exception or exclusion for unfiled mechanic or materialman's liens. Therefore, the written disclosure was only required in 35 files of the 100

files reviewed. The Company failed to make the requisite disclosure in all 35 files which demonstrated that, whenever the written disclosure was required, the Company's error frequency was 100%.

In 30 of the 35 reported instances the underwriting and escrow files provided by the Company did not contain evidence that the Company or its agents provided the prospective insured with the requisite written disclosure regarding unfiled mechanic or materialman's liens.

In 5 of the 35 reported instances the Company provided documentation demonstrating that the issuing agent provided the prospective insured with a written statement disclosing the availability of coverage for unfiled mechanic or materialman's liens. In these 5 instances, however, the written statements did not comply with the requirements of Colorado law because the statements did not contain information regarding the Company's underwriting standards or general requirements for the deletion of the standard exception for unfiled mechanic or materialman's liens. Instead, the disclosures merely stated that such coverage was available.

In addition to the findings discussed above, the following sample demonstrated that, in some instances, the Company failed to make the appropriate written disclosure when issuing title policies of insurance associated with the title transfer of single family residences, condominiums or townhouses in Colorado:

TITLE CLAIMS SUBMITTED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	1	2%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted against the Company during 1997, showed 1 instance (2% of the sample) wherein the Company issued title insurance policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado.

The policy excepted coverage for unfiled mechanics or materialman's liens, a coverage offered by the Company by endorsement, however, the Company failed to provide the insured with the requisite written notice regarding the availability and prerequisites of such coverage as required by 3 CCR 702-3 (3-5-1). The insured submitted a claim that was eventually denied by the Company under the general exception for unfiled mechanic and materialman's liens.

Recommendation #3:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company procedures necessary to implement the requisite change so that those procedures and guidelines include a requirement that will assure the Company will provide prospective insureds with written notification of the Company's general requirements for the deletion of the Company's general exception or exclusion to coverage for unfiled mechanic's liens.

In addition, the Company should be required to perform a self audit of all claims denied due, in whole or in part, to the general exception or exclusion contained in the tile policy for unfiled mechanic or materialman's liens. The self audit should cover a period from January 1, 1997 to present. After identifying the target denials, the Company should be required to accept liability for all claims identified by the audit in which the Company failed to provide the requisite written notice.

Issue D: Failing to provide mandatory "GAP" coverage for intervening matters found of record between closing and the recording or effective date of title insurance policies and/or failure to provide written notice to insureds of the existence of the mandated coverage.

Sections 10-3-1104(1)(a) and (1)(a)(I), C.R.S. define an unfair or deceptive trade practice in the business of insurance as:

> (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
>
> (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Section 10-11-102(3.7), C.R.S., provides:

> (3.7) "Gap coverage" means insuring, guaranteeing, or indemnifying owners of real property, or others interested therein, against loss or damage suffered by reason of matters appearing of record in the office of the clerk and recorder subsequent to the date of issuance of a title insurance commitment and prior to the recording of closing documents for the real property concerned.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII)(C) and (L) state in pertinent parts:

VII. CONSUMER PROTECTIONS

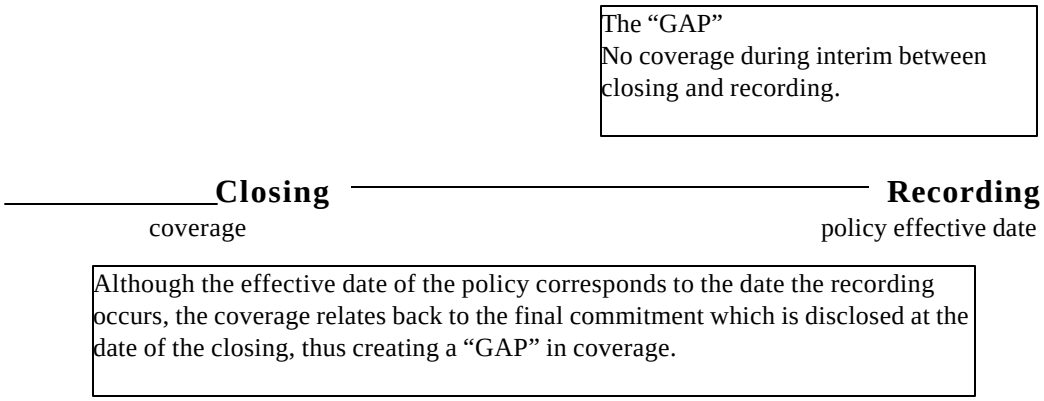
> C. Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed. . .
>
> . . .L. Each title entity shall notify in writing every prospective insured in an owner's title insurance policy for a single family residence (including a condominium or townhouse unit). . .
>
> . . .(ii) of the circumstances described in Paragraph C of Article VII of these Regulations, under which circumstances the title insurer is responsible for all matters which appear of record prior to the time of recording (commonly referred to as "Gap Coverage"). Notwithstanding the foregoing, nothing contained in this Paragraph L shall be deemed to impose any requirement upon any title insurer to provide mechanics or materialman's lien coverage.

The sections of the regulation cited above establish two basic requirements for title insurers offering coverage in Colorado. First, whenever a title insurer or its agent conducts a closing and is responsible for recording the legal documents related to the
subject closing and real estate transaction, the insurer must include coverage and accept liability for all matters which appear of record prior to the time of the recording in the ensuing title insurance policy.

Second, the regulation requires every title insurer to provide all prospective insureds seeking coverage for a single family residence, condominium or townhouse that the insurer is responsible for all matters which appear of record prior to the time of recording. This requirement is only applicable, however, when the insurer or its agent conducts the closing and records the legal documents associated with the real estate transaction.

An examination of Company underwriting rules, manuals, guidelines, Company policy forms and endorsement and selected underwriting and escrow files demonstrated that, during 1997, the Company was not in compliance with the requirements described above.

Specifically, the effective date of all title insurance policies issued by the Company is the date and time the closing entity records the instruments of conveyance. Although the date and time of recording is incorporated as the effective date of the title insurance policy, coverage is not continuous from the effective date backwards in time. Instead, the title policy relates back and insures the last update of the title commitment which is generally conducted just prior to closing. The following chart illustrates how the "GAP" is created through industry practice:



The Company's online underwriting manual discusses the "GAP" phenomenon in a title insurance transaction and establishes the Company's standard procedure regarding such coverage. Specifically, the manual states in part:

7.00.1 In General

Normally, title insurance companies are unwilling to offer insurance coverage until the duly executed instruments under which the proposed insured acquire their titles or interests are filed in the appropriate recording offices or registries.

Also, it is common procedure to effect a continuation, date-down, or bring-down search covering the period from the date and time of the commitment to the date and time of the recording, in order to inform the parties of those intervening matters found of record, if any, and to obtain proper instructions from the parties to the transaction on how to dispose or handle such matters.

However, occasionally, title insurance companies are requested to insure a title as of the time of the closing of the transaction instead of the time of the recording of the instruments, and thus, to give coverage against intervening matters found of record between closing and recording.

This kind of coverage is known as gap insurance. The gap may consist of minutes, hours, or days. In some locations insuring the gap is the customary practice; in some others, it is unknown.

7.00.2 Considerations in Regard to Gap Insurance

1. Gap insurance must be avoided, whenever possible, because of the additional amount of liability to be assumed by the Company.

2. Gap insurance must never be advertised or suggested to any proposed insured.

3. The possible time length of the gap insurance request must be determined in advance.

4. The validity of the reasons for the gap insurance request must be fully established.

5. Proper title indemnity in favor of the Company must be executed by the seller(s) or mortgagor(s) of the property in order to protect the Company against any possible intervening matters found of record.

6. Gap insurance must be given only in connection with the closings of residential properties. If you are requested to give gap insurance on commercial property contact the National Legal Department in Houston.

Stewart Title Guaranty Company, VIRTUAL UNDERWRITER INFORMATION SYSTEM, §§7.00.1 and 7.00.2 (Version 2.0 Current through 2/15/97).

The Company's manual states that GAP coverage "must be avoided whenever possible" and GAP insurance must never be advertised or suggested to any proposed insured." In addition, the manual states that Gap insurance should never be issued in conjunction with a title insurance policy insuring a commercial risk. The prohibitions and limitations set forth in the Company's underwriting manual regarding GAP coverage are not in compliance with the laws cited above.

Notwithstanding the limitations and prohibition on offering GAP insurance coverage set forth in the Company's underwriting manual, the Company does offer GAP coverage by endorsement. The Company's standard GAP endorsement provides GAP coverage by insuring over matters appearing of public records subsequent to the effective date of the commitment, but prior to the effective date of the policy which are not disclosed by the Company to the insured prior to the closing. Upon an insureds request and appropriate underwriter approval, the Company will issue the endorsement which does not carry any additional premium charge.

A sample of underwriting and corresponding escrow files demonstrated that the Company was not in compliance with Colorado laws regarding GAP coverage. Colorado law requires title insures to assume liability for all matters which appear of record prior to the time of recording. The Company's practice of corresponding the effective date of title insurance policies issued by the Company with the date and time of recording appears to demonstrate compliance with the law, however, further analysis demonstrates otherwise. Although the effective date of the policy corresponds with the date and time of recording, the title policy insures the last update of the commitment. Therefore, despite the declared effective date of the policy, coverage is actually effectuated backwards in time from the date the title commitment was last updated, thus creating a "GAP" in coverage from the last update of the commitment until the date and time of the recording.

The Company acknowledges and identifies the "GAP" in coverage and has an endorsement, offered at no additional charge, which insures over the "GAP" period. The endorsement, however, is not routinely issued in conjunction with the issuance of Colorado policies. Therefore no coverage exists between the last update of the commitment and the date of recording.

In the following instances the Company or its agent conducted closings and issued corresponding title insurance policies without providing GAP coverage for matters of record occurring after the date of the closing and prior to the effective date of the policy:

NEW BUSINESS TITLE POLICIES ISSUED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
35,994	100	74	74%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, showed 74 instances (74% of the sample) wherein the Company or its agents conducted closings and issued corresponding title insurance policies without providing coverage for intervening matters of record occurring after the date of the closing and prior to the effective date of the policy.

Furthermore, since the Company or its agents only conducted closings in 74 of the 100 files reviewed, only 74 files were subject to the requirement that the Company provide the mandated GAP coverage. Since the Company failed to offer or provide the coverage in all instances in which such coverage was required, the 74 files reported here demonstrate a frequency error of 100%.

The sample of underwriting and accompanying escrow files also demonstrated that Company failed to comply with the disclosure requirements cited above. Specifically, in the following instances, the Company issued title insurance policies and conducted closings for title policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. In each instance the Company failed to included a GAP endorsement or otherwise indicate the Company was responsible for all matters appearing of record prior to the time of recording.

NEW BUSINESS TITLE POLICIES ISSUED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
35,994	100	37	37%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, showed 37 instances (37% of the sample) wherein the Company issued title insurance policies and conducted closings for title policies providing owner's coverage for risks associated with the title transfer of single family residences, condominiums or townhouses in Colorado. None of the 37 owner's policies issued included a GAP endorsement or otherwise indicated the Company was responsible for all matters appearing of record prior to the time of recording. Failure to provide written notification of the existence of such coverage does not comply with the requirements of 3 CCR 702-3 (3-5-1)(VII)(L).

The 37% error frequency reported here is diminished by the fact that only 37 of the 100 policies reviewed were subject to this standard and required the written disclosure pertaining to GAP coverage. Specifically, only 37 of the 100 files reviewed were owner's title insurance policies

insuring single family residences in which the Company or its agents conducted the closing. Therefore, the written disclosure was only required in 37 files of the 100 files reviewed. The Company failed to make the requisite disclosure in all 37 files which demonstrated that, whenever the written disclosure was required, the Company's error frequency was 100%.

Recommendation #4:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(C) and (L). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines and other requisite Company procedures so that all title policies issued by the Company include coverage for intervening matters which found of record between the real estate or loan closing and recordation of the instruments of conveyance.

The Company should also be required to provide written assurances to the Division that, whenever the Company issues an owner's title policy covering a single family residence, condominium or townhouse, the Company will either issue its standard GAP endorsement (GE-1) with such policy or otherwise provide written disclosure regarding the existence of coverage for matters appearing of record between the real estate closing transaction and recordation.

In addition, the Company should be required to perform a self audit of all claims denied from January 1, 1997 to present. After identifying the denied claims, the audit should be designed to identify all claims denied based on a finding that there was no coverage because the insured did not purchase GAP coverage for matters appearing of record between the closing and recording. The Company should then be required to pay all claims as identified by the audit.

Issue E: Failing to include and/or list endorsements to a policy on a policy declarations page or otherwise include such information within the written terms of title policies issued.

Sections 10-3-1104(1)(a)(I), C.R.S. defines certain unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; . . .

A review of the following sample demonstrated that, whenever the Company issued a title insurance policy in Colorado during 1997, the Company failed to identify or itemize the total premium charges or list endorsements to the policy in a declarations page or otherwise include such information within the terms of title insurance policies issued.

NEW BUSINESS TITLE POLICIES ISSUED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
35,994	100	100	100%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, showed 100 instances (100% of the sample) wherein the Company issued title insurance policies without itemizing or list inclusive endorsements on a policy declaration page or otherwise disclose such information within the written terms of the policy.

The Company's method of notifying prospective insureds of the premium charges and endorsements requested by the insured for inclusion the prospective title insurance policy was to include a statement of charges in the lower right hand corner of the respective insured/applicant's original commitment papers.

Upon issuing the title insurance policy the commitment papers are incorporated into the title policy, however, the Company omits the itemization of endorsements that appeared within the terms of the original commitment papers. Therefore, the listing of the policy endorsements is not contained in the final policy issued. In addition, the only indication that an endorsement or rider has amended a particular policy is that a copy of the endorsement or rider is included in the underwriting file and placed behind the policy. The endorsements are not otherwise "attached" to the policy and the pages of the policy are not numbered (i.e. 1 of 1) to identify the length of the policy or otherwise identify the existence of any endorsements or riders.

A review of claims submitted to the Company during 1997 demonstrated that, the Company's practice of omitting an itemization of endorsements on the policy declarations page or anywhere else in the policy terms, resulted in disputes over whether certain coverages existed and delayed payment and/or handling of claims.

TITLE CLAIMS SUBMITTED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	2	4%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted against the Company during 1997, showed 2 instances (2% of the sample) wherein the Company, following its standard procedure and issued title insurance policies without listing the endorsements on the respective policy's declarations page or anywhere else in the policy. Claims were submitted under each policy and, in both instances, the issue of whether coverage was extended under the policy focused on whether or not each policy had been endorsed to delete the standard title policy exceptions 1 through 4.

In one instance the claimant purchased the endorsement, however, the Company adjuster's review of the claimant's policy did not reveal the claimant purchased the standard 110.1 endorsement providing owner's extended coverage (OEC) and deleting standard exceptions 1 through 4. Since the adjuster did not possess evidence that the claimant purchased the endorsement, the adjuster denied the claim.

Upon receiving the denial letter, the claimant wrote the Company to inform the adjuster that the claimant purchased OEC and the claimant's copy of the policy contained a deletion of general exceptions 1-4 (OEC). In this instance, instead of following the Company's normal procedure and endorsing the policy by including a loose copy of the standard endorsement along with the policy papers, the Company's agent removed the standard exceptions by reference in schedule B of the policy.

In another instance the claimant submitted a claim and, once again, coverage was contingent on whether the claimant purchased the OEC endorsement. In this instance the adjuster reviewed the claimant's policy and located the loose endorsement in the Company's copy of the claimant's file. Having located a copy of the endorsement, the adjuster initially determined that the claimant's policy included the endorsement and, therefore, coverage should be extended. Approximately one week after the adjuster determined coverage, the Company's National Legal Department (NLD) reviewed the file and determined that the endorsement was issued in coordination with the lender's title policy, not the owner's title policy under which the claim was submitted. Based on the NLD's finding, the claim was eventually denied.

The Company's misleading practice of omitting an itemization of endorsements from a policy declaration or general cover page (schedule A or B), without express underwriting rules or guidelines regarding record retention and attachment of documents, was susceptible to confusion over what coverages were provided by a specific policy contract. As demonstrated in the claims sample reviewed and discussed above, this practice often resulted in the denial of legitimate claims, especially where Company adjusters displayed uncertainty and experienced difficulty in ascertaining whether the insured had purchased a particular endorsement.

Recommendation #5:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §10-3-1104(1)(a)(I), C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its policy forms and endorsements and underwriting guidelines and procedures and any other requisite Company operations so that all title policies issued by the Company incorporate a listing of any endorsements and/or riders on the policy declaration page or within the terms of the policy as to all future policies issued by the Company.

Issue F: Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.

Sections 10-3-1104(1)(a) and (1)(a)(I), C.R.S. define an unfair or deceptive trade practice in the business of insurance as:

> (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
>
> (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

Colorado Insurance Regulation 3 CCR 702-3 (3-5-1)(VII)(G), adopted in part pursuant to the authority granted under §§10-1-109 and 10-3-1110, C.R.S., states:

> No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.

The following sample demonstrated that, in some instances, the Company or its agents provided closing and/or settlement service in Colorado during 1997 without obtaining the requisite written closing instructions signed by all necessary parties.

NEW BUSINESS TITLE POLICIES ISSUED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
35,994	100	8	8%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, showed 8 instances (8% of the sample) wherein the Company or its agents provided closing and/or settlement services for Colorado consumers without receiving written closing instructions from all necessary parties.

Recommendation #6:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(a) and (1)(a)(I), C.R.S., and 3 CCR 702-3 (3-5-1)(VII)(G). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its underwriting guidelines, agency agreements or other Company operations necessary to assure that the Company and its agents will obtain written instructions from all necessary parties whenever the Company or its agents perform closing and settlement services in Colorado.

Issue G: Insuring over or issuing commitments to insure over recorded defects in title without complying with statutory and regulatory requirements and/or offering to insure risks other than title and/or failing to follow Company underwriting rules and guidelines when insuring over recorded defects in title.

Section 10-3-1104(1)(f)(II), C.R.S. defines an unfair business practice in the business of insurance as:

> Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-11-102(8), C.R.S. defines title insurance in Colorado as:

> "Title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.

Section 10-11-108(1), C.R.S. provides in pertinent part:

> A title insurance company or title insurance agent shall not:
>
> (a) Engage in the business of guaranteeing the payment of the principal or the interest of bonds, notes, or other obligations;
>
> (b) Transact, underwrite, or issue any kind of insurance other than title insurance;

Sections 10-11-108(1)(a) and (b), C.R.S., prohibit title insurers licensed to conduct title insurance business in Colorado from engaging in the business of guaranteeing the payment of the principal or the interest of bonds, notes, or other obligations or otherwise transacting, underwriting, or issuing any kind of insurance in Colorado other than title insurance. Title insurance is defined under the Title Insurance Code of Colorado as guaranteeing or indemnifying entities with ownership interest in real property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.

Consistent with the statutory provisions cited above, Colorado Insurance Regulation 3-5-1 prohibits title insurers from using the insurers own funds and acting as a surety by insuring over the possible adverse effects of any recorded lien, recorded encumbrance or other recorded interest. Specifically, 3 CCR 702-3(3-5-1)(VII)(D), adopted pursuant to the authority granted under §§ 10-1-109, 10-3-1110, and 10-11-118, and Part 4 of Article 4 of Title 10, C.R.S., provides:

> No title entity shall undertake to insure any person or entity against the possible adverse effect of any recorded lien, recorded encumbrance or other recorded interest unless:
>
> 1. Such title entity deletes such recorded lien, recorded encumbrance or other recorded interest from the schedule of exceptions in its title commitment and has on hand funds, securities, a bonded obligation, or letter of credit payable to the order of said title entity, adequate to discharge such lien, encumbrance or other interest in the event said lien, encumbrance or other interest is perfected to the detriment or possible detriment of the person or entity insured, or any successor in interest to such person or entity; or
>
> 2. Such title entity reflects such recorded lien, recorded encumbrance or other recorded interest in the schedule of exceptions in its title commitment, and such title entity receives an appropriate indemnity from the responsible party.

INSURING OVER RECORDED DEFECTS IN TITLE:

The following sample demonstrated that, in some instance when the Company undertook to insure over a recorded defect in title, the Company failed to comply with the requirements of Colorado law, effectively resulting in the insurer assuming or offering to insure risks other than title. In addition, the sample demonstrated that the Company failed to enforce or follow its own underwriting standards when insuring over, offering to insure over or issuing commitments to insure over recorded title defects.

TITLE CLAIMS SUBMITTED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	4	8%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the Company in Colorado during 1997, showed 4 instances (4% of the sample) wherein the Company endeavored to act as a surety by insuring over recorded defects in title without first obtaining funds, securities, a bonded obligation, or letter of

credit payable to the Company sufficient to discharge the defect and/or attempted to act as surety by attempting to insure over a recorded defect in title without securing an indemnity from the responsible party and listing the defect in the title commitment.

In one instance an insured submitted a claim related to a mechanic's lien filed by a subcontractor in the amount of $150,000 prior to issuance of the title policy. The seller of the property believed the mechanics lien was unenforceable and agreed to indemnify the Company for any loss or damage resulting from damages incurred by means of insuring over the lien. The Company agreed to insure over the lien by acquiring an indemnity agreement from the responsible party.

Although Colorado law permits title insurers to effectively insure over a recorded title defect by procuring an indemnification agreement from the responsible party, the insurer must disclose the existence of such lien in the schedule of exceptions of the title commitment. In this instance the Company obtained the requisite indemnity agreement, however, the Company failed to reflect the lien in the commitment papers and did not disclose the lien to the insured covered under the owner's title policy.

In another instance a claim arose when the insured attempted to refinance the first deed of trust and the title agency issuing the commitment for the new transaction included a requirement for a corrective deed due to defects in the deed. The Company's agent issued a commitment insuring over the defect, however, the agent failed to obtain the requisite indemnity agreement and did not include the defect in the commitment papers.

In another instance a claim arose when the insured attempted to obtain a second mortgage and the lender advised the insured of an outstanding mechanic's lien and unreleased deed of trust. The Company's adjuster discovered that the issuing agent obtained an indemnity agreement from the seller and insured over the defect, however, the agent failed to obtain the requisite indemnity agreement and did not include the defect in the commitment papers.

In another instance the insured submitted a claim for on an unreleased deed of trust. The Company agreed to insure over the deed by acquiring an indemnity agreement from the prior title insurer. Although the Company obtained the appropriate indemnity agreement, the Company did not obtain the agreement until after the initial commitment papers were issued and failed to include the defect in the commitment papers.

FAILING TO FOLLOW/ENFORCE COMPANY UNDERWRITING STANDARDS/ GUIDELINES:

In addition to the above, in each reported instance in which the Company or its agent insured over, issued a commitment to insure over, or otherwise offered or proposed to insure a recorded title defect, the Company failed to follow or enforce Company underwriting guidelines. Specifically, the Company's agency underwriting agreement provides:

> **COMPANY agency shall not, without prior written consent of UNDERWRITER, insure over a title defect, lien, or encumbrance, regardless of any indemnity or deposit that COMPANY shall obtain.**

Stewart Title Guaranty Company, TITLE INSURANCE UNDERWRITING AGREEMENT, Exclusive Form, ¶4(e) at page 4 (Revised October 8,1998).

In addition, the underwriting file did not demonstrate that the agency complied with the Company's underwriting rule by requesting Company approval before insuring over the lien.

Recommendation #7:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(f)(II) and 10-11-108(1)(a) and (b), C.R.S., and 3 CCR 702-3(3-5-1)(VII)(D). In the event the Company is unable to provide such documentation, it should be required to provide written assurances indicating that, whenever the Company insures over, offers to insure over or issues title commitments to insure over recorded defects in title, the Company will comply with the requirements of Colorado law.

Moreover, the Company should be required to provide written assurance that, whenever the Company attempts to insure over any recorded defect in title by obtaining an indemnity agreement, the Company will list the defect in the title commitment, disclose the defect to the insured and continue listing the defect on each subsequent updated commitment, including the final commitment papers which are incorporated into the title policy.

The Company should also be required to provide written assurances that it will not transact, underwrite, or issue any kind of insurance in Colorado other than title insurance.

Finally, the Company should be required to submit written documentation demonstrating that the Company has amended its underwriting procedures to guarantee enforcement of the Company's agency underwriting agreements insofar as such agreements affect the underwriting of title insurance policies in Colorado and which will assure that the Company agents will comply with Company underwriting standards and guidelines.

PERTINENT FACTUAL FINDINGS

for

RATING

Issue H: Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify premium rates and closing and settlement fees and charges.

Section 10-3-1104(l)(f)(II), C.R.S., defines an unfair method of competition or deceptive act or practice in the business of insurance as:

> Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-403(1), C.R.S., provides:

> Rates shall not be excessive, inadequate, or unfairly discriminatory. The following standards shall apply:
>
> (a) Rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if the expenses are unreasonably high in relation to services rendered.
>
> (b) Concerning inadequacy, rates are not inadequate unless clearly insufficient to sustain projected losses and expenses, or if the use of such rates, if continued, will tend to create a monopoly in the market.
>
> (c) Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is unfairly discriminatory solely if different expenses, or like expenses but different loss exposures so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104(l)(f) shall apply.

Section 10-4-403(2), C.R.S., provides:

> In determining whether rates comply with the excessiveness standard, the inadequacy standard, and the unfair discrimination standard, the following criteria shall apply:
>
> (I) Concerning basic factors in rates, due consideration shall be given to past and prospective loss and expense experience, to catastrophe hazards and contingencies, to events or trends, to loadings for leveling

premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment;

(II) Concerning expenses, the expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expenses experience;

(III) Concerning profits, the rate shall contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and the reserves associated with those premiums.

(b) In setting rates, insurers shall consider past and prospective loss experience, and catastrophic hazards, if any, solely within the state of Colorado. However, if there is insufficient experience within Colorado upon which a rate can be based, the insurer may consider experiences within any other state or states which have a similar cost of claim and frequency of claim experience as the state of Colorado; and, if insufficient experience is available, the insurer may use a countrywide experience. The insurer, in its rate filing or in its records, shall expressly show what rate experience it is using. In considering experience outside the state of Colorado, as much weight as possible shall be given to the Colorado experience. The rates shall allow a reasonable margin for profit and contingencies, profit being as allowed in subparagraph (III) of paragraph (a) of this subsection (2).

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VI)(K)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.

Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income

> and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

> (1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.
>
> (4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

The Company's base rating manual for Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas and Elbert counties contains a rating rule that allows a 50% discount on title policies issued in association with commercial risks. The Company's rating rule states:

> The Commercial Rate for title insurance means and includes all title rates for the title insurance in excess of $450,000 in total coverage. The normal Commercial Rate Premium shall be charged based on the basic rate schedule of rates as set forth in Title 2 hereof. However, in all cases in which the title company has (1) received background information (including but not limited to recent preliminary title reports or policies); or (2) the title insurance is for the benefit of commercial lender, developer or investor, then the title company may charge a special Commercial Rate of 50% of the basic schedule of rates as applied to the amount being insured.

Stewart Title Guaranty Company, INDEX, FEES AND RULES GOVERNING THE ISSUANCE OF TITLE INSURANCE COMMITMENTS, POLICIES AND ENDORSEMENTS IN THE STATE OF COLORADO COUNTIES OF DENVER, JEFFERSON, ADAMS, ARAPAHOE, DOUGLAS, BOULDER, CLEAR CREEK AND ELBERT, Section B Title 3 Article 3.2.2 at page 10 (ed 5/1/97).

Whereas the Company's standard closings and settlement fee for a realtor or broker is $140.00, the Company's five-county rate filing contains a rating rule that charges higher closing

and settlement and service fees for transactions in which the real estate sale was conducted by the property owners instead of a realtor or broker. The rule states:

> For sale by owner transactions, all counties except Boulder $350.00
> Boulder County $200.00
>
> ($50% charged to seller / 50% charged to buyer)
>
> Residential 1-4 single family real estate transactions without the services of a licensed real estate broker.
>
> Includes the services listed above, and includes the additional costs for coordinating details with seller's attorney, communication with all parties regarding settlement services, specific charges and other details, legwork and service time required to satisfy requirements, provisions and contingencies of the title commitment and the purchase contract. This rate is a minimum charge. Additional service charges shall be made when the closer's preparation time exceeds three (3) hours.

Stewart Title Guaranty Company, INDEX, FEES AND RULES GOVERNING THE ISSUANCE OF TITLE INSURANCE COMMITMENTS, POLICIES AND ENDORSEMENTS IN THE STATE OF COLORADO COUNTIES OF DENVER, JEFFERSON, ADAMS, ARAPAHOE, DOUGLAS, BOULDER, CLEAR CREEK AND ELBERT, Section B Title 10 Article 10.2 at page 56 (ed 5/1/97).

The Company's 1988 base rate manual contains a rule that provides a discount for certain developers or subdividers of properties. The 1988 manual provides:

> The following rate is applicable only when policies are to be issued insuring 3 or more different purchasers and/or lessees.
>
> 50% of the Basic Rate Schedule

Stewart Title Guaranty Company, INDEX, FEES AND RULES GOVERNING THE ISSUANCE OF TITLE INSURANCE COMMITMENTS, POLICIES AND ENDORSEMENTS IN THE STATE OF COLORADO, Section B Title 7 at page B-7-1 (ed. 1988).[5]

Pursuant to 3 CCR 702-3(3-5-1(VI)(K)), adopted under the authority granted by §10-4-404, C.R.S. the examiners requested Company representatives to produce sufficient financial and statistical data to demonstrate the above cited rates and rating rules were not inadequate, excessive, or discriminatory in accordance with 10-4-401 et seq.

[5] *See* note 6 above.

The Company's response to the examiners' request for statistical and financial justification of the commercial rate was as follows:

> (a) The proportional cost to produce a commercial title policy in relationship to the premium charged is less than the proportional cost for a typical residential policy.
> (b) When specific additional background information (including but not limited to background policies, financial statements and other historical data) is received prior to issuance of a commercial policy the overall risk is reduced.
> (c) This rate has been filed with the Division of Insurance for more than ten years.
>
> These rates should not be considered inadequate or unfairly discriminatory and the should [*sic*] not be considered in violation of Colorado anti-remuneration laws.

The Company's response to the examiners' request for statistical and financial justification of the for sale by owner closing and settlement fee was:

> The cost of preparing and closing a transaction for a for sale by owner transaction is greatly increased because many of the functions typically completed by a Colorado licensed Real Estate Broker must be completed by the title company processor or closer. Example of functions typically handled by Broker would be: Gathering of preliminary information; assistance in satisfying title company requirements; coordination and scheduling of closing; explanation of documentation prior to and at closing. This rate should not be considered inadequate, excessive or unfairly discriminatory.

The Company's response to the examiners' request for statistical and financial justification of the Company's subdivider rate was as follows:

> These rates are not inadequate because multiple policies are issued within a short period of time between land acquisition and final sales to owners. When multiple policies are issued they typically relate to the same or similar title issues in a particular subdivision. Risk reductions and time savings are obtained which correlate to a reduced charge to the consumer.
>
> Therefore, these rates should not be considered inadequate or unfairly discriminatory and they should not be considered in violation of Colorado anti-remuneration laws.

The cited Company responses are not sufficient justification of the cited Company rates and do not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain supporting financial data and were not statistically justified. In addition, the Company's

responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the rates and closing and settlement fees and charges.

In addition to the Company rating rules discussed above, a review of statewide rate filings made by the Company and or its Colorado agents, raised certain questions regarding whether the Company's statewide rating scheme complied with the requirements of Colorado law. Specifically, the examiners questioned whether variances in rate charges among different Colorado counties was unfairly discriminatory under Colorado law or whether the county-by-county rating scheme in the business of title insurance resulted in excessive rates.

For instance, an examination of the Company's May 1, 1997 rate filing effective for Boulder and Denver counties showed different rates were charged in each county. The premium charges for a basic ALTA owner's policy in Denver County in 1997 were $730.00 on a $100,000 home, or $7.30 per thousand. Each additional thousand dollars of coverage over and above 100,000 carried an additional premium charge of $1.85 per thousand.

The premium charges for the same coverage in Boulder County during 1997 were $576.00 on a 100,000 home, or $5.76 per thousand. Just as in Denver County, each additional thousand dollars of coverage over and above the $100,000 carried an additional premium charge of $1.85 per thousand. Considering the significant reduction in premium charges for the first 100,000 in coverage in Boulder County as compared to Denver County, the examiner's questioned the per unit premium charge for coverage over $100,000. Moreover, the examiners asked the Company to justify and explain why the per unit charge in for coverage in excess of $100,000 was not reduced in Boulder County commensurate with the reduction for the first $100,000 in coverage.

In addition, the examiners requested the Company to identify factors supporting an increase in premium charges in Denver as opposed to the lower rates charged in Boulder County. The Company was informed that its response should be a detailed answer describing past and prospective loss and expense experience. The Company was also asked to demonstrate how a reasonable profit provision is incorporated into the Company's premium charges for title coverage, specifically indicating how the Company's investment income offsets the reasonable profit provision.

The Company's response was to consider differences in both premium rate charges and closing and settlement fees and charges between the following five counties:

1. DENVER
2. BOULDER
3. PUEBLO
4. LARIMER
5. MESA

In addition, the examiners requested the Company to justify its base rate charges in Denver, Jefferson, Adams, Arapahoe, Douglas, Elbert and Clear Creek counties and to explain why there was no variance in premium charges or closing and settlement fees and charges in those 7 counties. The Company was asked to consider, if other counties in Colorado rationally supported varying rate filings, what the common factor, or factors, were which supported a uniform rate filing for the seven counties.

Finally, the Company was asked to justify fluctuations in premium charges for endorsements among separate counties. The examiners requested the Company to limit its response to justifying the different premium charges required for the three endorsements and two counties listed below:

Endorsement Number & Description of Coverage	Eagle County	Denver County	Difference
100 Restrictions 1 to 4 Family Dwellings	$50.00	$30.00	$20.00
103.1 Damages from Easements	$50.00	$30.00	$20.00
110.7 Variable Rate Mortgage	$25.00	$20.00	$5.00

The Company's response to the examiners' request for statistical and financial justification of the Company's county-by-county rate scheme was:

> Premium charges vary from county to county in Colorado for rate filings of Stewart Title Guaranty Company ("STG") and, we believe, for all other underwriters doing business in Colorado. For more than two decades rates have been filed county by county in Colorado without question, comment or complaint from the Colorado Division of Insurance ("Division"). In fact, it is our understanding that the Division has previously taken the position that to file rates on a state wide basis and not county by county would be discriminatory based on varying expenses in outlying counties. We have filed those rates consistent with C.R.S. 10-4-401, which provides that title insurance rates shall be regulated by "open competition" and not by extensive regulation, such as through rating organizations. Rating organizations could possibly result in more uniform statewide premium rates or the applicable statutes could provide for uniform statewide rates; however, the law does not contain such limitation or regulation at this time. Although our expenses and losses will vary from county to county, our

filings are not based solely on such factors but on the practical necessity to compete, as recognized in both C.R.S. 10-4-401 and 10-4-403. It also is our belief that business factors relating to historical expense categories in different geographical areas of the state have contributed to the varying rates over the past several decades. We encourage more extensive regulation in the future by the state, pursuant to changes in the law and clarification of the state's position on a uniform basis to all title companies. If a more comprehensive response is required, then we request from the Division a copy of all filings by competitors in the counties mentioned in this request.

2. Your first question relates to the variance in rates between Denver and Boulder counties. Please see answer to #1.

3. You ask us to consider differences in fees and charges between the following counties: Denver, Boulder, Pueblo, Larimer, and Mesa. Again, please see answer to #1.

4. Finally, you request justification in endorsement charges between three different endorsements in two counties. See answer to #1.

As stated above, the cited Company responses are not sufficient justification of the cited Company rates and do not satisfy the requirements of §10-4-401 et seq., C.R.S. Specifically, the responses did not contain supporting financial data and were not statistically justified. In addition, the Company's responses did not consider past and prospective loss and expense experience and the response did not identify or explain how a reasonable profit provision was incorporated into the development of the rates and closing and settlement fees and charges.

Recommendation #8:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(f)(II) and 10-4-403(1), C.R.S., and 3 CCR 702-3 (3-5-1)(VI)(A), (B) and (K) as applicable to the findings addressed in the text above. In the event the Company is unable to provide such documentation, it should be required to provide the Colorado Division of Insurance with adequate financial and statistical data of past and prospective loss and expense experience to justify the cited Company premium rates and closing and settlement fees and charges. The filing should specifically identify and explain how a reasonable profit provision is incorporated into the development of the Company's premium rates and closing and settlement fees and charges.

Issue I: Using rates and/or rating rules not on file with the Colorado Division of Insurance and/or misapplication of filed rates.

Section 10-4-403(1), C.R.S. provides:

> Rates shall not be excessive, inadequate, or unfairly discriminatory.

Additionally, Section 10-3-1104(1)(f)(II), C.R.S., defines unfair discrimination as:

> Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates, charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Consistent with the provision of §10-4-401 et seq., 3 CCR 702-3(3-5-1) requires all title insurers offering coverage in Colorado to comply with Colorado laws and regulations regarding rates and rating practices. Specifically, the regulation provides in pertinent parts:

> IV. SCHEDULE OF RATES, FEES AND CHARGES--TITLE INSURANCE POLICIES
>
> A. Every title insurer shall adopt, print and make available to the public a schedule of rates, fees and charges for regularly issued title insurance policies including endorsements, guarantees and other forms of insurance coverages, together with the forms applicable to such fees. . .
>
> . . .G. Such schedule must be filed with the Commissioner in accordance with Part 4 of Article 4, Title 10, C.R.S., and Section 118, Article 11, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .J. No title entity shall quote any rate, fee or make any charge for a title policy to any person which is more or less than that currently available to others for the same type of title policy in a like amount, covering property in the same county and involving the same factors as set forth in its then currently effective schedule of rates, fees and charges. . . .
>
> . . .V. SCHEDULE OF FEES AND CHARGES--CLOSING AND SETTLEMENT SERVICES

> A. Every title entity shall adopt, print, and make available to the public a schedule of fees and charges for regularly rendered closing and settlement services. . . .
>
> . . .F. Such schedule must be filed with the Commissioner in accordance with Section 118, Article 11, Title 10, C.R.S., and Part 4 of Article 4, Title 10, C.R.S., and any applicable regulation or regulations on rates, rate filings, rating rules, classification or statistical plans. . . .
>
> . . .I. No title entity shall quote any fee or make any charge for closing and settlement services to any person which is less than that currently available to others for the same type of closing and settlement services in a like amount, covering property in the same county and involving the same factors, as set forth in its then currently effective schedule of fees and charges.

Colorado Insurance Regulation 3 CCR 702-5(5-1-10)(III)(B)(1) and (4) provide:

> (1) Every property and casualty insurer, including workers' compensation and title insurers, are required to file insurance rates, minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.
>
> (4) Each rate filing must be accompanied by rating data, as specified in § 10-4-403, C.R.S., including at a minimum past and prospective loss experience, loss costs or pure premium rates, expense provisions, and reasonable provisions for underwriting profits and contingencies, considering investment income from unearned premium reserves, reserves from incurred losses, and reserves from incurred but not reported losses

I. GENERAL ISSUES PERTAINING TO UNFILED RATES

Failure to File Colorado 1988 Base Rate Manual Used in Colorado in 1997

A review of the Company rate filings effective in Colorado during 1997 demonstrated that, during 1997, where current rate filings were silent as to specific rates, discounts, and endorsements, the Company referred back to and relied on a comprehensive base rate manual intended to be effective in Colorado August 1, 1988. The Company, however, was unable to produce a copy that comprehensive rate manual bearing the Division's "Filed Stamp," and evidencing the rate manual was ever filed.

Failure to File Base Rates for Policies Issued Certain Colorado Counties

A review of the Company's rate filings demonstrated that the Company failed to file a comprehensive rating scheme applicable for Montrose, Prowers, and San Miguel counties applicable for 1997. In addition, an examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, demonstrated that, despite its failure to file rates applicable for Montrose, Prowers, and San Miguel counties, the Company issued policies in those counties. Issuing policies in Colorado without any corresponding rates on file with the Colorado Division of Insurance is in direct conflict of Colorado law.

Using an Unfiled Subdivider Rate

The Company attempted to file a subdivider rate in its statewide manual which was filed with the Colorado Division of Insurance effective November 1, 1989, however, the rule was incomplete and unintelligible and could not be applied as written. Specifically, although the rate manual provides an extensive description and justification of the rate, the percentage of the discount available to eligible applicants is not included. There is not numerical figure.

Further examination of underwriting and escrow files demonstrated that the Company used the rate in Colorado during 1997. Specifically, an examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997 demonstrated that, despite the Company's failure to file an effective rate for a subdivider discount, the Company frequently used the discount in Colorado during 1997. Notwithstanding the failure if the Company's statewide subdivider rate, the Company did file a complete subdivider which was effective in limited, enumerated counties.

In addition to the findings stated above, the following sample demonstrated that, in some instances during 1997, the Company failed to follow rates on file with the Colorado Division of Insurance when issuing policies of insurance:

NEW BUSINESS TITLE POLICIES ISSUED-1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
35,994	100	97	97%

An examination of 100 systematically selected underwriting and accompanying escrow files, representing .28% of all new business title policies issued by the Company in Colorado during 1997, showed 97 instances (97% of the sample) wherein the Company or its agents conducted closings and/or issued title insurance policies using rates and/or rating rules not on file with the

Division of Insurance and/or failed to follow rates in file with the Colorado Division of Insurance when issuing policies of insurance.

The rating errors fell into two broad categories. In the first category were errors that occurred because the Company issued policies of insurance using premium rates which deviated from the Company's rates on file with the Colorado Division of Insurance

The second category contained rating errors which occurred because the Company or its agents conducted real estate closing and settlement services in coordination with the issuance of title insurance policies and collected fees and charges for the closing and settlement services which deviated from the Company's closing and settlement services fee schedule filed with the Colorado Division of Insurance.

Many files reviewed contained more than one rating error, however, to maintain sample integrity, each file was considered as a singular error regardless of the total errors contained in the file. Thus, the error frequency reported above was 97%, however the 100 files reviewed contained a total of 271 rating errors. All rating errors fell into specific sub-categories within the two larger categories identified immediate above (i.e. deviation from premium rates and deviation from closing and settlement service fees and charges). The 271 rating errors are discussed and outlined below in context of the appropriate sub-categories.

II. DEVIATION FROM FILED COMPANY PREMIUM RATES

Sixty-seven (67) of the 97 files reported here (67% of sample) contained rating errors in which the Company failed to issue policies of insurance using rates filed with the Colorado Division of Insurance. The 67 files contained a total of 91 premium calculation errors (35 calculation errors in determining owners' premium charges; 26 rate calculation errors in determining lenders' premium charges, and; 30 errors in determining premium charges for endorsements issued in association with both owner's and lenders' policies).

Premium calculation errors in these 67 files resulted in premium overcharges ranging between $1.00 and $375.00 and premium undercharges ranging between $4.00 and $845.00.

III. DEVIATION FROM FILED SCHEDULE OF CLOSING AND SETTLEMENT FEES AND CHARGES

Eighty-five (85) of the 97 files reported here contained instances in which the Company or its agents deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services on file with the Colorado Division of Insurance. The 85 files contained a total of 292 rating errors that fell into separate categories as follows:

A. OVERCHARGES FOR MISCELLANEOUS FEES ASSOCIATED WITH CLOSINGS PERFORMED BY THE AGENCY

Misapplication of Express Fee Charges

In forty-two (42) of the 97 reported files (43% of the sample), the Company's agents collected monies from insureds for express mail and/or courier charges for mailing that were to be conducted in coordination with the real estate and/or loan closing. In all 42 instances the mailings were either never performed, or the actual charges incurred for the mailings were different then the amount billed or collected by the agency. Since the actual charges incurred in relation to these mailing charges was not documented in any of the files reported here, a range of error was not discernable.

Tax Certificate Charges

Sixty-one (61) of the 97 reported files (63% of the sample) contained overcharges related to tax certificates obtained by Company agents on behalf of insureds in conjunction with closing services performed by the Company agent. Specifically, a review of 100 underwriting files demonstrated that, in 1997, Company agents had a practice of charging a flat rate for tax certificates obtained in conjunction closings services regardless of the actual cost incurred in obtaining the tax certificate. The practice of charging a flat rate for tax certificates (flat rate fees ranged between $12.00 and $30.00) generally resulted in Company agents charging excess funds for tax certificates obtained by the agency. Since the Company failed to file any flat rate for tax certificates with the Colorado Division of Insurance, any monies collected in excess of the actual cost of obtaining the tax certificates resulted in the collection of an unfiled fee and application of an unfiled rate. The 61 errors resulted in overcharges ranging between $5.25 and $10.25.

Overcharges & Miscalculation of Recording Fees

Nineteen (19) of the 97 reported files (20% of the sample) contained overcharges and miscalculations of charges made by Company agents to cover the costs of recording and/or filing documents incidental to the conveyance of real property. Such recorded documents include mortgages, deeds of trust, assignments, powers of attorney, warranty deeds and releases. As in the case of express mail charges, many of the overcharges resulted from Company agents charging flat rates for recording a particular document. Since the Company failed to file any flat rate for recording or filing such documents, any monies collected in excess of the actual cost of recording or filing the specific document resulted in the collection of unfiled fees and application or use of unfiled rates. The 19 errors resulted in overcharges ranging between $5.00 and $28.00 and undercharges ranges between $1.00 and $24.00.

Overcharges of Miscellaneous Fees Associated with Closings

Twenty (20) of the 97 reported files (21% of the sample) contained overcharges made by Company agents for miscellaneous expenses incurred in conducting closings. Such expenses included wire fees, document preparation charges, and cashier's check charges. As in the case of express mail and recording charges discussed above, many of the overcharges resulted from Company agents charging flat rates to defray the costs of such services. Since the Company or its agents failed to file any flat rates to cover these miscellaneous expenses, all monies collected in excess of the actual cost of performing or obtaining such goods or services resulted in the collection of unfiled fees and application or use of unfiled rates. The 20 errors resulted in overcharges ranging between $10.00 and $95.00.

B. OVERCHARGES & MISCALCULATIONS OF CLOSING FEES

Thirty-eight (38) of the 97 reported files (39% of the sample) contained rating errors[6] in which the Company agents deviated from the Company's schedule of fees and charges for regularly rendered closing and settlement services, filed with the Colorado Division of Insurance. Specifically, the files contained rating errors in which Company agents made charges for basic closing fees that deviated from the Company or its agent's filed fee schedule. The 38 errors resulted in overcharges ranging between $15.00 and $100.00 and undercharges ranging between $10.00 and $130.00.[7]

Recommendation #9:

Within 30 days the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104(1)(f)(II) and 10-4-403, C.R.S., and the filing requirements of 3 CCR 702-3(3-5-1). In the event the Company is unable to provide such documentation, it should be required to demonstrate that it has reviewed its procedures relating to the filing of rates and rating rules and has implemented procedures which will assure future compliance with the filing requirements of the Colorado Division of Insurance.

The Company should also be required to provide assurances that all future policies will be issued in accordance with filed company rates and all premium charges will accurately reflect rates on file with the Colorado Division of Insurance. In addition, the Company should also be required to provide assurances that all future closings services will be provided in accordance with the appropriate filed closing and settlement fee schedule and all such charges will accurately reflect rates on file with the Colorado Division of Insurance.

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[6] Many of the 38 files reported here contained rating errors regarding closing fees for both the real estate and lender closing transaction. Where multiple closing fee errors occurred within a file, the file was only reported as a single error.

[7] The range of error reported here is based on the miscalculation or misapplication of a single closing fee, either real estate or lender. The range does not represent the total monetary error contained in a file with multiple closing fee errors.

Finally, the Company should be required to address certain individual rating issues presented in this report as identified below:

Regarding the Company's failure to provide evidence showing the 1988 base rate manual was filed with the Colorado Division of Insurance, the Company should be required to provide evidence to the Colorado Division of Insurance demonstrating that the rate manual was filed. In the event the Company is unable to provide such documentation, the Company should be required to provide documentation that it had ceased using the manual in Colorado or, alternately, has filed the rates with the Colorado Division of Insurance.

Regarding policies issued by the Company in Colorado counties for which the Company had no supporting rate filing, the Company should be required to cease issuing policies in those counties or file appropriate rates for those counties in accordance with the provisions of §10-4-401 et seq.

Pertaining to the Company's use of the unfiled subdivider rate, the Company should be required to cease using the subdivider rate in all Colorado counties for which the 1989 filing applies. In the event the Company desires to implement a new subdivider rate for those counties excluded by failure of the 1989 rule, the Company should be required to submit a new filing to support the rate. Such filing should be reviewed consistent with the applicable provision of §10-4-401 et seq., and should reflect the Colorado Division of Insurance position as stated in Bulletin 2-99 dated April 30, 1999.

Regarding overcharges in filed Company premium rates and agency closing fees, the Company should be required to perform a self audit from January 1, 1997 to present and return any excess monies collected as determined by the self audit. The self audit should be performed in accordance with Colorado guidelines for self audits.

Regarding miscellaneous closing fees and charges; the Company should be required to either adopt and implement procedures which will assure that the Company's agents will only bill for the actual amount of the goods or services used or procured in the closing transaction, the Company should amend its filed fee schedule to include rules which supports its agents' practices of charging monies in excess of the actual costs incurred or waiving such charges where such charges are incurred.[8] The Company should also provide written assurances that

[8] Any fee filing made by a title insurance agency is subject to §10-4-401 et seq., and may not be excessive, inadequate, or unfairly discriminatory. In addition, a fee schedule waiver rule many conflict with 3 CCR 702-3 (3-5-1)(VI)(B)(8) which prohibits title insurance entities from:

> 8. Waiving, or offering to waive, all or any part of the title entity's established fee or charge for services which are not the subject of rates filed with the Commissioner.

A scheduled fee waiver rule that provides for the waiver or nominal amounts and is applied consistently and in a nondiscriminatory fashion may comport with the intent of the regulation.

Company agents will not charge any miscellaneous closing fee or expense unless such charges are actually incurred and, whenever charges are collected up-front, excess money will be refunded when the services are not subsequently performed.

Issue J: Adopting rate rules, premium charges and closing and settlement fees and charges which are excessive, unfairly discriminatory or which allow improper remuneration of producers of title insurance business.

Section 10-3-1104(l)(f)(II), C.R.S., defines an unfair method of competition or deceptive act or practice in the business of insurance as:

> Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-4-403(1), C.R.S., provides:

> Rates shall not be excessive, inadequate, or unfairly discriminatory. The following standards shall apply:
>
> (a) Rates are excessive if they are likely to produce a long run profit that is unreasonably high for the insurance provided or if the expenses are unreasonably high in relation to services rendered.
>
> (b) Concerning inadequacy, rates are not inadequate unless clearly insufficient to sustain projected losses and expenses, or if the use of such rates, if continued, will tend to create a monopoly in the market.
>
> (c) Concerning unfair discrimination, unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is unfairly discriminatory solely if different expenses, or like expenses but different loss exposures so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104(l)(f) shall apply.

Section 10-4-403(2), C.R.S., provides:

> In determining whether rates comply with the excessiveness standard, the inadequacy standard, and the unfair discrimination standard, the following criteria shall apply:
>
> (I) Concerning basic factors in rates, due consideration shall be given to past and prospective loss and expense experience, to catastrophe hazards and contingencies, to events or trends, to loadings for leveling

premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment;

(II) Concerning expenses, the expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as it is credible, its own actual and anticipated expenses experience;

(III) Concerning profits, the rate shall contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and the reserves associated with those premiums.

(b) In setting rates, insurers shall consider past and prospective loss experience, and catastrophic hazards, if any, solely within the state of Colorado. However, if there is insufficient experience within Colorado upon which a rate can be based, the insurer may consider experiences within any other state or states which have a similar cost of claim and frequency of claim experience as the state of Colorado; and, if insufficient experience is available, the insurer may use a countrywide experience. The insurer, in its rate filing or in its records, shall expressly show what rate experience it is using. In considering experience outside the state of Colorado, as much weight as possible shall be given to the Colorado experience. The rates shall allow a reasonable margin for profit and contingencies, profit being as allowed in subparagraph (III) of paragraph (a) of this subsection (2).

Section 10-11-108(d), C.R.S., provides:

A title insurance company or title insurance agent shall not. . .

(b) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business;

(c) Give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered. For purposes of this article, "services actually rendered" shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with

sound underwriting practices; "services actually rendered" shall not include the mere referral of title insurance business.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1)(VI)(K)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

> K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.
>
> Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VI)(A) and (B), provide in pertinent parts:

A. In addition to any and all acts which may be proscribed elsewhere in Title 10, no title entity shall pay, furnish, or agree to pay or furnish, either directly or indirectly, to or on behalf of any of the persons listed in this paragraph A, any commission or any part of the fees or charges or anything of value, in connection with any past, present, or future title insurance business, any closing and settlement services or any other title business:

    1. Any producer of title business, or any associate thereof;

A. The following is a partial, but not all-inclusive, list of acts and practices which are considered unlawful inducements proscribed by this Regulation, and the Colorado statutes pertaining to the business of insurance. . .

    4 Paying for, furnishing or offering to pay for or furnish to or for any of the persons described in A. of this article by way of reward, inducement or compensation with respect to any past, present or future title insurance business or any closing and settlement services or other title business, anything of material value. . .

    7. Charging less than the scheduled rate, fee or charge for a specified title or closing and settlement service, or for a policy of title insurance.

For purposes of the regulation cited above, 3 CCR 702-3(3-5-1)(III)(A) defines a "producer of title insurance" as:

> F. "Producer of title business" includes any person engaged in the trade, business, occupation or profession of:
>
> 1. Buying or selling interests in real property;
>
> 2. Making loans secured by interests in real property; and,
>
> 3. Acting as agent, representative, attorney, or employee of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security. (Notwithstanding the foregoing no title entity acting in the capacity of agent for any of the above parties in performing the business of title insurance shall be deemed to be a producer of title business.)

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VI)(B)(11), prohibits title insurers from:

> Accumulating, crediting or deferring the charge for a title policy or closing and settlement services in order to 'qualify' the charge for said policy and a later transaction for a lower rate.

COMMERCIAL RATES

The Company's base rating manual for Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas and Elbert counties contains a rating rule that allows a 50% discount on title policies issued in association with commercial risks. The Company's rating rule states:

> The Commercial Rate for title insurance means and includes all title rates for the title insurance in excess of $450,000 in total coverage. The normal Commercial Rate Premium shall be charged based on the basic rate schedule of rates as set forth in Title 2 hereof. However, in all cases in which the title company has (1) received background information (including but not limited to recent preliminary title reports or policies); or (2) the title insurance is for the benefit of commercial

> lender, developer or investor, then the title company may charge a special Commercial Rate of 50% of the basic schedule of rates as applied to the amount being insured.

Stewart Title Guaranty Company, INDEX, FEES AND RULES GOVERNING THE ISSUANCE OF TITLE INSURANCE COMMITMENTS, POLICIES AND ENDORSEMENTS IN THE STATE OF COLORADO COUNTIES OF DENVER, JEFFERSON, ADAMS, ARAPAHOE, DOUGLAS, BOULDER, CLEAR CREEK AND ELBERT, Section B Title 3 Article 3.2.2 at page 10 (ed 5/1/97).

To qualify for 50% discount premium factor cited above, an applicant must meet one of three qualifications. An applicant may qualify for the discount if one of the following criteria are met:

1. The applicant is insuring title in excess of $450,000; or,

2. The applicant can produce a prior title insurance policy or recent preliminary title reports; or any instance in which,

3. The title insurance policy is issued for the benefit of a commercial lender, developer or investor.

The rating rule is discretionary in that it states that if an applicant meets one of the three enumerated criteria an applicant "may" qualify for a commercial discount. In order to comply with the requirements of Colorado law rates cannot be unfairly discriminatory and insurers are prohibited from using rates or underwriting criteria that create unfair discrimination between individuals of the same class and of essentially the same hazard.
The Company's discretionary rating rule is facially discriminatory in that, the rule as written, implies that the Company or its agent may refuse to extend the discount to a qualified applicant in one instance, while arbitrarily allowing the discount in another. The permissive rule allows disparate treatment among individuals of the same class and, therefore, is not in compliance with Colorado law.

Any applicant purchasing property with an insurable title interest in excess of $450,000 qualifies for the commercial discount, regardless of whether the applicant is an individual or a corporation or whether the applicant is a producer of title insurance business as defined under Colorado law. In this regard, if this criterion can be statistically justified, it does not appear to be in violation of Colorado anti-discrimination or anti-remuneration laws.

The second criterion is similar to the Company's reissue rate and, if statistically justified and applied equally among all qualifying applicants, does not appear to be contrary to Colorado law.

The third qualifying criterion conflicts with Colorado anti-remuneration laws. Specifically, the commercial discount rule allows a 50% premium discount for any policy issued by the Company

for the benefit of a commercial lender, developer or investor. 3 CCR 702-3(3-5-1)(VI)(A) prohibits title insurers from discounting premium charges for or on behalf of any producer of title insurance business. A "producer of title insurance business" is defined by the regulation as "any person engaged in the trade, business, occupation or profession of buying or selling interest in real property or making loans secured by interests in real property." Allowing a premium discount to a producer of title insurance business simply because such entity is a commercial lender, developer or investor is in direct conflict with Colorado law.

FOR SALE BY OWNER CLOSING FEES

Whereas the Company's standard closing and settlement fee for a realtor or broker is $140.00, the Company's five-county rate filing contains a rating rule that charges higher closing and settlement and service fees for transactions in which the real estate sale was conducted by the property owners instead of a realtor or broker. The rule states:

> For sale by owner transactions, all counties except Boulder $350.00
> Boulder County $200.00
>
> ($50% charged to seller / 50% charged to buyer)
>
> Residential 1-4 single family real estate transactions without the services of a licensed real estate broker.
>
> Includes the services listed above, and includes the additional costs for coordinating details with seller's attorney, communication with all parties regarding settlement services, specific charges and other details, legwork and service time required to satisfy requirements, provisions and contingencies of the title commitment and the purchase contract. This rate is a minimum charge. Additional service charges shall be made when the closer's preparation time exceeds three (3) hours.

Stewart Title Guaranty Company, INDEX, FEES AND RULES GOVERNING THE ISSUANCE OF TITLE INSURANCE COMMITMENTS, POLICIES AND ENDORSEMENTS IN THE STATE OF COLORADO COUNTIES OF DENVER, JEFFERSON, ADAMS, ARAPAHOE, DOUGLAS, BOULDER, CLEAR CREEK AND ELBERT, Section B Title 10 Article 10.2 at page 56 (ed 5/1/97).

The augmented closing and settlement fees charged to Colorado consumers selling their homes without enlisting the services of a real estate agent or broker is, without appropriate statistical justification, unfairly discriminatory and/or excessive as defined by 10-4-401 et seq., C.R.S. Conversely, if the higher closing and settlement fees charged in

for sale by owner transactions were justified, the reduced closing and settlement service fees charged to real estate brokers and realtors (producers of title insurance business) must be justified in light of both 10-4-401 et seq., C.R.S., and Colorado anti-remuneration laws.

SUBDIVIDER DISCOUNTS

The Company's 1988 base rate manual contains a rule that provides a discount for certain developers or subdividers of properties. The 1988 manual provides:

> This section is applicable to title insurance insuring purchasers from and/or loans to owners of three or more parcels of commercial, industrial and/or residential properties including, but not limited to, condominium or planned unit development projects.
>
> The Basic Subdivision Rate is to an owner of land within a single subdivision or tract which has been divided or Is to be divided into three (3) or more lots or units of occupancy, all of which are being developed for sale as separate lots of separate individual units of occupancy.
>
> The charges set forth herein are in addition to the charges for the policy insuring the owner upon acquisition of his estate or interest in the land if such policy was issued or is to be issued.
>
> Note: The "Short Term Rate" does not apply to this section.
>
> 7.1 Basic Subdivision Rate:
>
> The following rate Is applicable only when policies are to be issued insuring 3 or more different purchasers and/or lessees.
>
> 50% of the Basic Schedule of Rates.
>
> JUSTIFICATION:
>
> Multiple policies are issued within a short period of time between land acquisition and final sales to owners. If subdividers were to be charged 100% of Basic Rate for each policy ordered, the ultimate home sales price would have to be significantly increased to cover those added costs thereby adversely affecting the consumer.
>
> Example: A subdivider developer/builder purchases multiple policies within a short period of time, i.e. 6 months to one year, and is therefore entitle [*sic*] to a

> lesser fee per policy that the Basic Schedule Rates than would the average homeowner in a resale/refinance situation.
>
> According to a published Statistical Report prepared by Seidman & Seidman of Austin, Texas which report dealt with cost of operation of title insurance companies in Texas, a Time and Motion study conducted as a part of the study indicated it takes 14.3% less direct labor time to process a "reissue" vs. "new" title insurance policy.

Stewart Title Guaranty Company, INDEX, FEES AND RULES GOVERNING THE ISSUANCE OF TITLE INSURANCE COMMITMENTS, POLICIES AND ENDORSEMENTS IN THE STATE OF COLORADO, Section B Title 7 at page B-7-1 and 2 (ed 1988).[9]

The Company's subdivider rate provides a discounted premium rate to producers of title insurance business. The Company's argument that these rates are not remuneration to producers of title insurance business or unfairly discriminatory and/or excessive (insomuch as the rate disfavors the average consumers) is threefold: (1) purchasers of multiple policies deserve a volume discount; (2) savings to developers/builders will be passed on to consumers, and; (3) a statistical report demonstrating that it takes 14.3% less direct labor time to process a "reissue" vs. "new" title insurance policy.

The first justification offered for the subdivider rate is that subdividers purchase multiple title policies and are therefore entitled to a volume business discount. Colorado insurance laws, however, prohibit title insurers from charging a producer of title insurance business less than the scheduled rate for any given title insurance policy to induce past, present or future title insurance business.

Colorado law defines a producer of title insurance business as any person engaged in the trade, business, occupation or profession of buying or selling interests in real property or any person making loans secured by interests in real property. Anyone qualifying for the Company's subdivider discount is, by definition, a producer of title insurance business. Specifically, the discount is designed to favor builders, land speculators and developers and is only available to an owner of land that is being developed for resale into a minimum of three separate lots and/or units of occupancy. That the rating rule was designed to favor producers of title insurance business is further evidenced by the Company's example in the justification of the rating rule which states that "a subdivider developer/builder" qualifying for the rate will pass the savings on to the consumer. Thus, the volume discount justification fails under Colorado law because it is remunerative and, as the rule anticipates future business, is an improper inducement for future title insurance business.

[9] *See* note 6 above.

Another reason the volume justification fails under Colorado law is the prohibition set forth under 3 CCR 702-3(3-5-1(VI)(B)(11). Specifically, the concept of providing a current discount because of actual or potential future title insurance business conflicts with the prohibition on crediting or deferring the charge on a current title policy in anticipation of a subsequent title transaction.

The second justification of the rate is that the savings in title insurance premium are passed on from the subdivider/developer to the consumer. Specifically, the Company's rate justification states that if subdividers were to be charged 100% of the company's basic rate, the cost would be passed on to the consumer through a price increase in home sales. In addition to the 50% discount available to subdividers, the Company offers a 50% short-term reissue rate for title policies issued within 3 years of a prior policy. Any builder/developer purchasing and developing property would most likely qualify for the reissue rate upon resale of the developed property to a Colorado consumer/homebuyer. In addition, the mere fact that a developer/builder may receive a discounted insurance premium for the initial title transfer does not, per se, indicate that savings will or is passed on to the consumer.

The third justification offered by the Company for the subdivider rate is a statistical report prepared by Seidman & Seidman of Austin, Texas. The Seidman report, a time and motion study addressing the cost of operation of title insurance companies in Texas, indicated it takes 14.3% less direct labor time to process a "reissue" vs. "new" title insurance policy. Notwithstanding the fact that the Seidman report was conducted in Texas and not Colorado, the report provides a reasonable justification for a "short term reissue rate" discount, however, the report is not beneficial in analyzing the Company's subdivider rate.

Many applicants qualifying for the subdivider rate also qualify for the short-term reissue rate available in Colorado, however, the Company's rating rules limit application of the discounts so that a single applicant only qualifies for one or the other (i.e. subdivider discount is not also eligible for a short term reissue rate). The fact that most individuals that qualify for a subdivider rate also qualify for the less discriminatory reissue rate makes the subdivider rate duplicative and obsolete. The only remaining function of the subdivider rate is to provide a title insurance premium discount to a producer of title insurance who would not otherwise qualify for a reissue rate (i.e. purchasing undeveloped land which has not transferred title or been insured within the reissue period) as an inducement for prospective future business.

FAILING TO ADJUST INCREMENTAL PREMIUM CHARGES FOR RISKS IN EXCESS OF $100,000

An examination of the Company's May 1, 1997 rate filing effective for Boulder and Denver counties showed different rates were charged in each county. The premium charge for a basic ALTA owner's policy in Denver County in 1997 was $730.00 on a $100,000 home, or $7.30 per thousand. Each additional thousand dollars of coverage over and above 100,000 carried an additional premium charge of $1.85 per thousand.

The premium charge for the same coverage in Boulder County during 1997 was $576.00 on a 100,000 home, or $5.76 per thousand. Just as in Denver County, each additional thousand dollars of coverage over and above the $100,000 carried an additional premium charge of $1.85 per thousand. Considering the per unit charge for the first $100,000 of coverage was $1.54 less per thousand in Boulder County than it was in Denver County, absent statistical justification the per unit charge for title coverage in excess of $100,000 in Boulder County should be reduced commensurate with the reduction for the first $100,000 of coverage. The Company's failure to make the commensurate reduction or to justify the $1.85 per thousand unit premium charge for title risks in excess of 100,000 in Boulder County resulted in an excessive, unfairly discriminatory rate.

Recommendation #10:

Within 30 days, the Company should demonstrate why it should not be considered in violation of §§10-3-1104(1)(f)(II) and 10-4-403(1), C.R.S., and 3 CCR 702-3 (3-5-1)(VI)(A), (B) and (K). In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has amended its rates and rating rules and schedules of closing and settlement fees and charges so that material excludes the use of subdivider rates, for sale by owner closing and settlement fees and any other remunerative, excessive or unfairly discriminatory rates used by the Company to write title insurance in Colorado.

In addition, the Company should be required to perform a self audit of all county-by-county rate filings effective from January 1, 1997 to present to identify any counties which do not have a filed premium rate to determine premium for title risks in excess of $100,000 and which, therefore, charge a flat $1.85 for every thousand dollars of coverage over $100,000. The Company should then be required to submit amended rate filings for each county filing identified by the audit so that the premium charged for coverage over $100,000 is commensurate with the per unit reduction for the first $100,000 to obviate any excessive or unfairly discriminatory premium charges.

PERTINENT FACTUAL FINDINGS

Relating to

COMPANY CLAIMS PRACTICES

Issue K: Failure to implement reasonable standards for the prompt investigation of claims.

Section 10-3-1104(1)(h)(III), C.R.S., defines an unfair claims settlement practice as:

> Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	20	40%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company in Colorado during 1997, showed 20 instances (40% of the sample) wherein the Company failed to implement reasonable standards for the prompt investigation of claims arising under insurance policies.

In 13 of the 20 reported instances the Company adjusters failed to review or diary open claims files and failed to review unreserved claim files every thirty days as required by operation of Company rule. Specifically, the Company's claims manual provides:

> Once the inquiry has been entered into the ITS system, the FCSR will be prompted to provide updates every thirty days to the NCC until the matter has been resolved or converted to a reserved claim.

Stewart Title Guaranty Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, § III(A)(3) Investigating the Inquiry at page 12 (ed. 1/95).

These 13 reported instances were all unreserved claims in which the Company's adjuster failed to update the claim files every 30 days as required by the Company rule. The respective adjuster's failure to comply with the Company rule resulted in delays in claims processing as claim files remained idle for periods ranging from 31 to 137 days.

Furthermore, although the Company's claims manual contains a rule requiring updates for unreserved claim files, the Company does not have a rule requiring adjuster to update or diary reserved files. Failure to adopt or implement a rule requiring adjusters to periodically review open claims files and assure timely processing of claims does not comply with Colorado law.

In 1 of the 20 reported instances the Company's adjuster failed to follow a Company claims manual rule requiring the Company to obtain a retention agreement from outside counsel hired by the Company to defend an insured in a title matter. Specifically, the Company's Field Customer Service Representative Manual provides:

B. HIRING OF OUTSIDE COUNSEL TO REPRESENT INSURED

The decision to hire outside counsel or to retain attorneys currently representing the insured is a decision that will be made subsequent to the determination of whether or not the Company will accept the tender of defense by the insured to the Company. Among the options granted to the Company under the Conditions and Stipulations portion of the policy is the right of the Company to hire counsel to cure title or legally do whatever may be necessary to establish or cure title to the estate or interest insured (owner policy), or to cure any problem regarding the priority or validity of the lien insured (loan policy). Because of his proximity to the situation, rapport with the agent, and knowledge of the locale, the FCSR's input in the selection of counsel will be heavily relied upon; however, the NCC shall be charged with the responsibility of making the ultimate decision regarding counsel.

Once a decision to retain outside counsel has been made, the FCSR should send a retention letter (Form No. 7) to the firm to confirm the payment agreement and to advise the firm of the Company's requirements regarding attorney invoices . The letter instructs, among other things, that counsel provide specific descriptions for all charges, and that invoices be directed to the FCSR for approval.

Stewart Title Guaranty Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, § IV(B) Hiring of Outside Counsel at page 17 (ed. 1/95).

To assist in obtaining coverage for the claim reported here, the insured enlisted the assistance of counsel. The Company knew, and acquiesced to the insured's choice of counsel, however, the Company's adjuster failed to comply with the Company's claims manual. Specifically, although the adjuster acquiesced to allow the insured's attorney to represent the insured in the matter, the Company failed to send the firm a retention letter (Form 7) as described in the rule cited above. The Company's failure to deliver the letter ultimately contributed to a dispute over and wrongful denial of a portion of the attorney's fees incurred by the insured to assist in handling the claim.

In 4 of the 20 reported instances Company adjusters failed to comply with the Company's claims manual when handling potential salvage recovery. Specifically, the Company's claims manual contains the following rule regarding subrogation and salvage:

SALVAGE

The Company actively pursues all feasible recovery opportunities. FCSRs are encouraged to consider potential salvage possibilities as they investigate and

structure the settlement of a claim. Attentiveness to detail and quick action are often the keys to successful recovery operations. The FCSR should always be mindful of any interests that the Company can (and should) acquire as the result of a payment tendered to a claimant or insured.

A. SALVAGE PROCEDURES

SETTING-UP SALVAGE FILES

When closing a file, the FCSR must make a determination whether there is any potential salvage, and so designate on the Closing Request. The FCSR should evaluate the file, considering what assets and interests have been obtained in the settlement.

Stewart Title Guaranty Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, §§ VII & VII(A) Salvage at page 31 (ed. 1/95).

In these four reported instances the Company's adjuster failed to make a determination regarding the salvage of the respective claim as required by operation of the Company's claims manual.

Two (2) of the 20 reported instances arose form delays in handling claims where such delays were directly attributable to the Company's failure to adopt procedures to assure the prompt investigation of claims arising under insurance policies. In one of these instances, a company agent failed to forward a claim to the Company for 113 days and no acknowledgement was mailed to the insured during the interim. The Company's claims manual does not contain a rule that would work to avoid such delays. In the other instance a Company adjuster notified an insured that the adjuster would seek additional information regarding the insured's claim. Subsequently, before the adjuster obtained the additional information, the claim file was inadvertently closed. The Company's claims manual does not contain any rules which would assist in avoiding these errors (i.e. a 30 day diary rule for reserved claims).

Recommendation #11:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(III). In the event the Company is unable to show such proof, it should provide evidence that it has reviewed all Company rules, manuals and procedures relating to the investigation and handling of claims and that it has implemented reasonable procedures to assure the Division of Insurance that all claims will be paid and investigated in accordance with Colorado Insurance Laws.

Issue L: Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

Section 10-3-1104(1)(h)(VI) defines an unfair claims settlement practice as:

> Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	2	4%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company during 1997, showed 2 instances (4% of the sample) wherein the Company's handling of claims demonstrated failure to make a good faith effort to effectuate prompt, fair and equitable settlement of claims.

Recommendation #12:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered to be in violation of § 10-3-1104(1)(h)(VI), C.R.S. In the event the Company is unable to provide such documentation, the Company should be required to provide evidence that it has reviewed its procedures regarding the prompt fair and equitable settlement of claims and has implemented procedures which will assure future compliance with Colorado Insurance Laws.

Issue M: Misrepresenting pertinent facts or insurance policy provisions relating to the coverage at issue

Section 10-3-1104(1)(f)(II), C.R.S. defines an unfair business practice in the business of insurance as:

> Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

Section 10-3-1104(1)(h)(I), C.R.S., defines an unfair claims settlement practices:

> Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	9	18%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company in Colorado during 1997, showed 9 instances (18% of the sample) wherein the Company misrepresented pertinent facts or insurance policy provisions relating to coverages at issue.

In five of the nine reported instances, insured's under owner's policies submitted claims for certain title defects (unfiled mechanic's liens, unreleased deeds of trust and flawed deed in chain of title). In each instance, the Company agreed to insure over the particular defect so that the respective insured could proceed with any pending or proposed transfer of the subject property.

In all five instance the Company should have proceeded in processing and handling the claim and offered to:

1. Insure over the defect; or,

2. Offered to indemnify a subsequent insurer for the defect in title, thus allowing the insured to continue pursuit of coverage from an alternate underwriter.

A letter contained in another claim file reviewed by the examiners evidenced the appropriateness of the second option. The letter was delivered to a financial institution which was insured under a lender's policy. In that letter the Company indicated:

> **. . .Stewart is willing to insure over the First Deed of Trust** or indemnify a title company of your choice **in the instance that the Insured proceeds with its foreclosure.**

In the five reported instances the Company failed to notify the insureds of the second option indicating that, if the insured wished to use a different underwriter for the pending real estate transaction, the Company would indemnify the other underwriter for the title defect. Instead, the Company omitted the alternative choice and only offered to provide coverage through the Company by insuring over the defect. Omitting this alternative or otherwise failing to offer to indemnify another underwriter of the insured's choice effectively limits an insured's discretion in obtaining title insurance coverage for the subsequent real estate transaction. This omission does not comply with requirements of § 10-3-1104(1)(h)(I), C.R.S.

In addition, notifying the financial institution insured under a lender's policy of the lender's right to seek coverage from another underwriter and obtain an indemnification agreement from the Company, while omitting such information when handling claims for individuals insured under owner's title policies insuring title on a single family homes demonstrates disparate treatment among Colorado insureds. Such disparate treatment is contrary to the requirements of §10-3-1104(1)(f)(II), C.R.S.

In two of the nine reported instances the Company denied coverage based on a standard exception contained in the title policies which excluded coverage for any encroachment or boundary dispute that a correct survey of the property would disclose and which are not shown by the public records. In both instances, however, a limited survey in the form of an Improvement Location Certificate (ILC) was conducted prior to the effective date of the policy and the ILC disclosed the defect.

Both files indicated that Company agents arranged for and obtained copies of the ILCs in conjunction with the agent's closing and settlement services. Provided both agents had actual notice (or alternatively, constructive notice) of the defects in these titles, coverage would be in order because the agents failed to include the defects in each polices' schedule of exceptions. The fact that each agent arranged for and obtained a copy of the particular ILC indicated the both agents had actual (or constructive) knowledge of the title defects. The Company's adjuster, however, denied both claims without informing the respective insured of the potential for recovery.

In addition, the Company's underwriting manual contains the following description of an ILC under a section of the manual discussing surveys:

The Spot Survey Or The Mortgage Inspection Report

> For years another kind of survey, generally known as "spot survey" or "mortgage inspection report", has been made by local surveyors for real estate and lending organizations. The certificate of a "spot survey" or "mortgage inspection report" states that it is conducted to locate improvements on a particular piece of property. The actual boundary lines are almost never marked on the ground. The surveyor generally will conduct just enough work to make a drawing of the house and other improvements; this may or may not require the usual surveying instruments. In general, this type of survey is of very limited value. Its primary purpose is to show that improvements (house, garage, etc.) are within property boundaries; therefore, the "spot survey" or "mortgage inspection report" need only be sufficiently accurate to establish this fact. Recognizing that these so-called "surveys" are not truly accurate, the American Congress on Surveying and Mapping, comprising some 66,000 surveying professionals across the United States, declared a resolution calling for renaming of the so called spot survey. This resolution states that calling results of such work a survey is a misnomer and suggests that a better name would be mortgage inspection report.
>
> In general terms, the "mortgage inspection report" is not sufficient in order to attempt the deletion of general exceptions numbers 4 and 5 of the title commitment.

Stewart Title Guaranty Company, VIRTUAL UNDERWRITER INFORMATION SYSTEM, §18.40.4 (Version 2.0 Current through 2/15/97).

The Company's denial letters in these two instances cited the policy language as the basis for the denial. The letters stated:

> First, Paragraph 3 of Schedule B of the Policy provides,
>
> This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:
>
> 3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
>
> This paragraph excepts coverage for boundary disputes and encroachments. To the extent that you have a problem with the location of the wall and fence, there is no coverage because Paragraph 3 of Schedule B of the Policy excepts

> coverage for encroachments. Also, an Improvement Location Certificate is not a survey.

The Company adjuster's denial letters in these two instances were misleading. Specifically, the adjuster's letter correctly quoted the policy language which, absent extended coverage or an endorsement insuring over the general exclusion, would exclude coverage for any encroachment or boundary dispute that a correct survey of the property would disclose. A limited survey, however, in the form of an ILC was conducted prior to the effective date of the policy and the ILC disclosed the defect.

The title policies issued in these instances did not contain a definition of the term "survey" as used in the exclusion. The Company's underwriting manual, however, recognized that, notwithstanding its limited scope and utility, an ILC is a type of a survey. In light of the Company's underwriting manual, the adjuster's statement that an ILC is not a survey is misleading or untrue.

In another instance, the Company refused to tender a defense to the insured based in part on a defense of improper notice. Specifically, although the insured gave notice of the claim to the Company's agent via a letter sent by fax on or about June 26, 1996, the Company argued that the notice was improper and delinquent because the insured failed to deliver the notice to the Company's Houston address until February 13, 1997.

In a letter dated August 1, 1997, the Company informed the insured:

> Second, you indicated that you had advised [the President of Telluride Mountain Title Company] of the claim in August, 1996 and have asserted that Stewart delayed getting involved in this matter. If you had read the Policy, you would have noticed that under Paragraph 17 of the Conditions and Stipulations, [you were] required to give notice directly to Stewart at its address in Houston. [The President of Telluride Mountain Title Company] and Telluride Mountain Title are not Stewart's "authorized agent." He is an independent businessman who, through a contractual agreement, has been authorized to issue Stewart's title insurance policies. Also, the relationship between Stewart and [you] is a contractual relationship defined by the terms of the Policy. When you finally gave Stewart notice of [your] claim (letter dated February 13, 1997), Stewart immediately hired [an attorney] to represent [you]. Any delay in hiring [the attorney] is clearly due to [your] failure to notify Stewart of this claim.

Company letter to insured dated August 1, 1997 (relevant nonentity and employee names omitted).

Eventually, the Company paid a portion of the defense attributable to the loss, however, the Company offset that amount based in part on an argument that the Company's position was compromised due to improper notice as stated above.

The Company's agency contract recognizes the customary assumption that knowledge of facts to an agent are imputed to the principle. Therefore, the standard language contained in the Company's agency contract regarding notice of claims provides:

> In the event a claim is made under a title policy, COMPANY shall give immediate notice thereof to the UNDERWRITER a Claim Report Form, a copy of the title policy involved, and all documents and information available relating to the claim. Company shall conduct all investigations requested by UNDERWRITER and shall cooperate with UNDERWRITER in the defense or settlement of the claim, whether such claim be made before or after the termination of this Agreement.

Stewart Title Guaranty Company, TITLE INSURANCE UNDERWRITING AGREEMENT, Exclusive Form, ¶3(h) at page 3 (Revisied October 8, 1998).

For the purposes of defining a "claim" as used in the agency contract cited above, the Company's claims manual defines a claim as:

> Any verbal or written communication by an insured or claimant that reasonably apprises the company of the facts of a claim.

Stewart Title Insurance Company, Field Customer Service Representative Manual, §(III) at p. 6 (ed. 1995).

In addition to the provisions of the Company's contract and underwriting procedures outlined above, a review of several claims files demonstrated that the Company's practice in a majority of claims files is to accept notice of a claim from the issuing agent.

The Company's initial denial, or reservation of rights letter dated February 13, 1997 was false or misleading in that it stated that the issuing agent was not an "authorized agent of the Company when in fact the Company's practice was to accept notice of claims from agents and the Company's agency contract contemplates such notice.

Another reported instance focused on misleading statements made by the Company to a claimant regarding the Company's liability for acts of the Company's agent. Specifically, the Company's denial letter stated:

> Telluride Mountain Title Company is Stewart's agent for the limited purpose of issuing title insurance policies. The relationship between Stewart and Telluride

> Mountain Title Company is a contractual relationship based on the Underwriting Agreement between the two companies. Therefore, Stewart is not liable for the acts of Telluride Mountain Title Company.

In this case, the insured submitted a claim alleging the Company's agent altered the insured's commitment papers prior to issuing the final title policy. Although the general statement regarding scope of agency made by the adjuster in the denial letter is accurate in general terms, in the context of the submitted claim the letter was misleading.

Recommendation #13:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered to be in violation of §§ 10-3-1104(1)(h)(1) and 10-3-1104(1)(f)(II), C.R.S. In the event the Company is unable to provide such documentation, the Company should be required to provide evidence that it has reviewed all procedures related to the handling of claims and investigation of claims and has implemented all necessary changes to assure compliance with Colorado insurance laws related to fairness and forthrightness in the claims handling process. Furthermore, the Company should be required to show that it has implemented procedures which will eliminate any misleading or deceptive conduct on behalf of Company adjusters and make assurances that all claims will be paid in accordance with Colorado insurance law and individual policy provisions.

In addition, the Company should be required to provide the Colorado Division of Insurance with written assurance that, as defined by the circumstances of the particular claim and sound business practices, the Company will use the same general standards in adjusting claims for all title risks insured by the Company in Colorado, regardless of the amount of premium charges or the identity of the insured.

The Company should also be required to provide the Colorado Division of Insurance with a written acknowledgement that notice of a claim to a Company agent is commensurate with notice to the Company and that claims received by Company agents will be handled by the Company in the same manner as claims received directly by the Company at its Houston address.

Issue N: Refusing to pay claims without conducting a reasonable investigation based upon all available information.

Section 10-3-1104(h)(IV), C.R.S., defines an unfair claims settlement practices:

> Refusing to pay claims without conducting a reasonable investigation based upon all available information;

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	7	14%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company in Colorado during 1997, showed 7 instances (14% of the sample) wherein the Company refused or denied payment of claims without conducting a reasonable investigation based on all available information.

Recommendation #14:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(IV), C.R.S. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed its claims handling procedures and has amended those procedures to assure compliance with the requirements of §10-3-1104(1)(h)(IV).

Issue O: Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

Section 10-3-1104(1)(h)(II), C.R.S., defines an unfair claims settlement practice as:

> Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	8	16%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company in Colorado during 1997, showed 8 instances (16% of the sample) wherein the Company failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

FAILING TO ACKNOWLEDGE RECEIPT OF CLAIMS SUBMITTED TO COMPANY AGENTS:

In 4 of the 8 reported instances the Company's failed to acknowledge receipt of claims submitted to Company agents. The delays were caused by the respective agent's failure to forward the claim to the Company.

The Company's agency contract recognizes the insurance industry custom that knowledge of facts to an agent are imputed to the principle. Therefore, the standard language contained in the Company's agency contract regarding notice of claims provides:

> In the event a claim is made under a title policy, COMPANY shall give immediate notice thereof to the UNDERWRITER a Claim Report Form, a copy of the title policy involved, and all documents and information available relating to the claim. Company shall conduct all investigations requested by UNDERWRITER and shall cooperate with UNDERWRITER in the defense or settlement of the claim, whether such claim be made before or after the termination of this Agreement.

Stewart Title Guaranty Company, TITLE INSURANCE UNDERWRITING AGREEMENT, Exclusive Form, ¶3(h) at page 3 (Revised October 8, 1998).

The Company's definition of the term "claim" is defined in the Company's claims manual which defines a claim as:

> Any verbal or written communication by an insured or claimant that reasonably apprises the company of the facts of a claim.

Stewart Title Insurance Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, §(III) at p. 6 (ed. 1995).

In one of the four instances in which the Company's agent failed to forward notice of a claim to the Company, the Company's agent received notice of the claim via a facsimile of a letter on or about June 26, 1997, however, the Company failed to respond until March 5, 1997, 252 days after the Company's agent first received notice of the claim.

In another of the four instances in which the Company's agent failed to forward notice of a claim to the Company, notice of the claim was sent to the insured over thirty days after receipt of the claim.

In another instance in which the Company's agent failed to forward notice of a claim to the Company, the Company's agent initially received notice of the claim on or about February 18, 1997. The file demonstrated that the agent copied the Company's adjuster in a Fax dated February 24, 1997. Although the claim was settled, the Company never acknowledged receipt of the claim or informed the insured the matter had been settled on the insured's behalf.

In an another instance, the Company's agent received notice of a claim via facsimile and first class mailing of a letter dated February 21, 1997. Since the Company deemed the matter a " non-covered escrow issue" the Company never acknowledged receipt of the claim or the correspondence related to the claim.

FAILING TO ACKNOWLEDGE OR ACT PROMPTLY UPON COMMUNICATIONS WITH RESPECT TO CLAIMS:

In another 4 of the 8 reported instances the Company received claims related correspondence from insureds and failed to either act upon and/or acknowledge those communications.

In one instance, the Company received notice of a claim on December 16, 1996. The Company's adjuster failed to acknowledge receipt of the claim until March 5, 1997 approximately 79 days after receipt of the claim.

In another instance, the Company received notice of a claim on December 9, 1997. The Company's adjuster acknowledged receipt of the claim by letter on December 23, 1997. The adjuster established a reserve for the claim on January 5, 1998, and the claim was paid on February 16, 1998. The insured, however, was not notified that the claim had been settled until June 29, 1998, over four months after the matter was resolved.

In another instance, the insured's attorney sent the Company a demand letter dated May 8, 1998, requesting the Company tender a defense. The Company's adjuster, however, failed to respond to an attorney's demand letter until July 8, 1998, 60 days after the adjuster first receiving the demand letter.

In a final instance, an insured's attorney wrote the Company's adjuster a letter requesting the Company provide attorney's fees incurred by the insured in curing a title defect. The claim file did not reflect any acknowledgement to the October 3, 1997 correspondence until January 19, 1998, 108 days after the Company received the attorney's request.

Recommendation #15:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(II), C.R.S. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed its procedures relating to the handling of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all communications with respect to claims arising under insurance policies will be acknowledged and acted upon in accordance with statutory requirements.

Issue P: Failure to affirm or deny coverage of claims within a reasonable time after receipt of proof of loss.

Section 10-3-1104(1)(h)(V), C.R.S., defines an unfair claims settlement practice as:

> Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

Because of the complex legal issues involved in real property disputes and defects in title, insureds under title policies often obtain counsel prior to submitting a claim under a title policy. The Company's Field Customer Service Representative Manual recognizes this practice and contains a provision which allows Company adjusters to retain attorney's already retained by the insured to assist the insured in the title matter. Specifically, the Company's claims manual provides:

> B. HIRING OF OUTSIDE COUNSEL TO REPRESENT INSURED
>
> The decision to hire outside counsel or to retain attorneys currently representing the insured is a decision that will be made subsequent to the determination of whether or not the Company will accept the tender of defense by the insured to the Company. Among the options granted to the Company under the Conditions and Stipulations portion of the policy is the right of the Company to hire counsel to cure title or legally do whatever may be necessary to establish or cure title to the estate or interest insured (owner policy), or to cure any problem regarding the priority or validity of the lien insured (loan policy). Because of his proximity to the situation, rapport with the agent, and knowledge of the locale, the FCSR's input in the selection of counsel will be heavily relied upon; however, the NCC shall be charged with the responsibility of making the ultimate decision regarding counsel.
>
> Once a decision to retain outside counsel has been made, the FCSR should send a retention letter (Form No. 7) to the firm to confirm the payment agreement and to advise the firm of the Company's requirements regarding attorney invoices . The letter instructs, among other things, that counsel provide specific descriptions for all charges, and that invoices be directed to the FCSR for approval.

Stewart Title Guaranty Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, § IV(B) Hiring of Outside Counsel at page 17 (ed. 1/95).

Once a claim is submitted, the Company's claims manual instructs the adjuster to decide whether the Company will accept the tender of defense by the insured. Provided the adjuster

determines coverage is in order, regardless of whether such coverage is extended under a reservation of rights, the adjuster is charged with deciding whether to hire outside counsel or to retain the attorney currently representing the insured.

Once a decision to retain outside counsel has been made, the adjuster is encouraged to send a standard Company form retention letter to the firm to confirm the payment agreement and to advise the firm of the Company's requirements regarding attorney invoices. The letter provides, among other things, a notice to the insured and the insured's attorney that the Company has accepted coverage, and more specifically, the insured's tender of defense.

In the following two reported instances, the Company's adjuster determined coverage and accepted an insureds tender of defense. However, in both instances, the adjuster failed to send the Company's standard form retention letter to the insured's attorney or otherwise provide notice to the insured or the insured's attorney that the Company accepted coverage or the tender of a defense.

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	2	4%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company in Colorado during 1997, showed 2 instances (4% of the sample) wherein the Company failed affirm or deny coverage of claims within a reasonable time after the Company received reasonable proof of the loss.

In one reported instance an insured submitted a claim for a title defect. The insured had already procured counsel in the matter and the Company acquiesced to allowing the insured's attorney to handle the matter, however, no correspondence was addressed to the insured informing the insured of the Company's willingness to accept coverage and assume the cost of legal fees associated with curing the tittle defect.

In another instance, the Company agreed to allow an insured's attorney to represent the insured in a covered title matter. Although the Company's adjuster decided to proceed with the matter by allowing the attorney retained by the insured to pursue the matter, nothing in the file demonstrated the Company affirmed coverage or issued a writing or otherwise indicated its intent to tender a defense.

Recommendation #16:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(h)(V), C.R.S.. In the event the Company is unable to show such proof, it should provide evidence that it has reviewed its procedures relating to the investigation of claims and that it has adopted reasonable procedures to assure the Division of Insurance that all claims will be paid in accordance with statutory requirements.

Issue Q: Failure to produce and/ or maintain adequate records for market conduct review and/or failing implement Company claims handling procedures.

Pursuant to the authority granted by § 10-1-109, C.R.S., Colorado Insurance Regulation 1-1-7 was adopted to assist the commissioner in carrying out market conduct examinations in accordance with Colorado law. Colorado Insurance Regulation 1-1-7 provides in pertinent parts:

B. RECORDS REQUIRED FOR MARKET CONDUCT PURPOSES

1. Every insurer/carrier or related entity licensed to do business in this state shall maintain its books, records, documents and other business records so that the insurer's/carrier's or related entity's claims, rating, underwriting, marketing, complaint, and producer licensing records are readily available to the commissioner. Unless otherwise stated within this regulation, records shall be maintained for the current calendar year plus two calendar years.

2. A policy record shall be maintained for each policy issued in this state. Policy records shall be maintained for the current policy term, plus two calendar years, unless otherwise contractually required to be retained for a longer period. Provided, however, documents from policy records no longer required to be maintained under this regulation, which are used to rate or underwrite a current policy, must be maintained in the current policy records. Policy records shall be maintained as to show clearly the policy term, basis for rating and, if terminated, return premium amounts, if any. Policy records need not be segregated from the policy records of other states so long as they are readily available to the commissioner as required under this rule. A separate copy need not be maintained in the individual policy records, provided that any data relating to that policy can be retrieved. Policy records shall include:

a. The application for each policy, if any;

b. Declaration pages, endorsements, riders, termination notices, guidelines or manuals associated with or used for the rating or underwriting of the policy. Binder(s) shall be retained if a policy was not issued; and

c. Other information necessary for reconstruction of the rating and underwriting of the policy.

3. Claim files shall be maintained so as to show clearly the inception, handling and disposition of each claim. A claim file shall be retained for the calendar year in which it is closed plus the next two calendar years.

4. Records relating to the insurer's/carrier's or related entity's compliance with this state's producer licensing requirements shall be maintained, which shall include the licensing records of each agency and producer associated with the insurer or related entity. Licensing records shall be maintained so as to show clearly the dates of the appointment and termination of each producer.

5. The complaint records required to be maintained under Section 10-3-1104, C.R.S. and Regulation 6-2-1.

Records required to be retained by this regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process which accurately reproduces or forms a durable medium for the reproduction of a record. A company shall be in compliance with this section if it can produce the data which was contained on the original document, if there was a paper document, in a form which accurately represents a record of communications between the insured and the company or accurately reflects a transaction or event. Records required to be retained by this regulation shall be readily available upon request by the commissioner or a designee. Failure to produce and provide a record within a reasonable time frame shall be deemed a violation of this regulation, unless the insurer or related entity can demonstrate that there is a reasonable justification for that delay.

The Company's claims manual also requires Company adjusters to adequately document claim files. The manual states:

> [T]he FCSR will develop the comments necessary to enable anyone accessing Stewart's Policy Loss Management System to understand the basic claim concerns.

Stewart Title Guaranty Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, § III(B)(1) Inputting Information at page 10 (ed. 1/95).

TITLE CLAIMS SUBMITTED - 1997

Population	Sample Size	Number of Exceptions	Percentage to Sample
82	50	11	22%

An examination of 50 systematically selected claims files, representing 61% of all claims submitted to the company during 1997, showed 11 instances (22% of the sample) wherein the Company failed to adequately document claim files sufficient to allow the examiners to determine compliance with Colorado law.

In addition to the above, the Company's 1997 claims manual contained the following rule regarding record retention:

> It is not necessary to forward closed inquiry files to the NCC. The FCSR may store them in a local office. The closed files may be discarded after 18 months.

Stewart Title Guaranty Company, FIELD CUSTOMER SERVICE REPRESENTATIVE MANUAL, § III(A)(5) Resolution of Inquiries at page 9 (ed. 1/95).

The 18 month record retention requirement set forth in the Company's Field Customer Service Representative's Manual, effective in Colorado during 1997, does not comply with the three year record retention requirement established under Colorado Insurance Regulation 1-1-7.

Recommendation #17:

Within 30 days, the Company should provide written documentation demonstrating why it should not be considered in violation of § 10-3-1104(1)(III), C.R.S., and 3 CCR 702-1(1-1-7), as authorized by §10-1-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence demonstrating the Company has reviewed its procedures pertaining to record maintenance in the context of claims handling. Particular areas of concern should include, but should not be limited to, adjuster notes, telephone logs and retention of all correspondence related to the respective claim, including correspondence directed to the Company's agents regarding any inquiry or claim.

Once the Company has reviewed those procedures, the Company should be required to demonstrate it has amended its claims manual and implemented procedures which will assure claim files will be maintained so as to clearly show the inception, handling and disposition of each claim and generally assure future compliance with the requirements of the law.

PERTINENT FACTUAL FINDINGS

Relating to

SPECIAL FINANCIAL REPORTING REQUIREMENTS FOR ENTITIES AUTHORIZED TO OFFER TITLE INSURER COVERAGE IN COLORADO

Issue R: Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.

Section 10-4-404, C.R.S. provides in part:

> (1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

Colorado Insurance Regulation 3 CCR 702-3(3-5-1(VI)(K)), adopted in part to the authority granted under §10-4-404, C.R.S. provides:

> K. Each title entity on an annual basis shall provide to the Commissioner of Insurance sufficient financial data (and statistical data if requested by the Commissioner) for the Commissioner to determine if said title entities' rates as filed in the title entities' schedule of rates are inadequate, excessive, or discriminatory in accordance with Part 4 of Article 4 of Title 10, C.R.S.
>
> Each title entity shall utilize the income, expense and balance sheet forms, standard worksheets and instructions contained in the attachments labeled "Colorado Uniform Financial Reporting Plan" and "Colorado Agent's Income and Expense Report" designated as attachments A & B and incorporated herein by reference. Reproduction by insurers is authorized, as supplies will not be provided by the Colorado Division of Insurance.

3 CCR 702-3(3-5-1) requires all title insurers authorized to provide coverage in Colorado to annually file a “Colorado Uniform Financial Reporting Plan” in a format described and appended to the regulation as “Attachment A”. The regulation requires all title agents licensed in Colorado to annually file a “Colorado Agent's Income and Expense Report” described and appended to the regulation as “Attachment B”.

In addition, the regulation requires all title insurers to file sufficient financial data and, upon request, statistical data to justify the title insurers rates and otherwise assure the rates used by

the Company comply with the requirements of §10-4-403 et. Seq., C.R.S., and are not excessive, inadequate, or unfairly discriminatory.

A review of the Company's 1997 financial statement and related documents and filings demonstrated that the Company failed to file a Colorado Uniform Financial Reporting Plan [3 CCR 702-3 (3-5-1) attachment A] as required by the regulation. In addition, the Company failed to file sufficient financial data to allow the Division to determine whether rates used by the company were excessive, inadequate, or unfairly discriminatory.

Based on the above, the examiners requested representatives of the Colorado Division of Insurance review the Company's 1997 financial statement and related filings to verify the above. That review demonstrated that the Company did not file the requisite Colorado specific report and/or financial data.

Recommendation #18:

Within 30 days, the Company should demonstrate why it should not be considered in violation of the financial data filing requirements established under 3 CCR 702-3 (3-5-1). In the event the Company is unable to provide such documentation, it should be required to provide evidence that it has amended its annual filing procedures so that those procedures anticipate filing of the Colorado Uniform Financial Reporting Plan (Schedule A). The Company should also be required to provide written assurances that it will annually file sufficient financial data to allow the Commissioner to determine whether the insurers rates are inadequate, excessive, or unfairly discriminatory and otherwise assure future compliance with Colorado financial reporting and filing laws.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON STEWART TITLE GUARANTY COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
1	12	**Issue A:** Failure to maintain minimum standards in a record of written complaints.
2	15	**Issue B:** Accepting title risks from producers without making or obtaining the requisite producer appointment.
3	20	**Issue C:** Misrepresenting the benefits, advantages, conditions, and/or terms of title insurance policies and/or failure to provide written notification to prospective insureds of the Company's general requirements for the deletion of exceptions or exclusions to coverage related to unfiled mechanics or materialman's liens.
4	26	**Issue D:** Failing to provide mandatory "GAP" coverage for intervening matters found of record between closing and the recording or effective date of title insurance policies and/or failure to provide written notice to insureds of the existence of the mandated coverage.
5	29	**Issue E:** Failing to include and/or itemize premium charges and/or list endorsements to a policy on a policy declarations page or otherwise include such information within the written terms of title policies issued.
6	31	**Issue F:** Failure to obtain written closing instructions from all necessary parties when providing closing and/or settlement services for Colorado consumers.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON STEWART TITLE GUARANTY COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
7	25	**Issue G:** Insuring over or issuing commitments to insure over recorded defects in title without complying with statutory and regulatory requirements and/or offering to insure risks other than title and/or failing to follow Company underwriting rules and guidelines when insuring over recorded defects in title.
8	44	**Issue H:** Failure to provide adequate financial and statistical data of past and prospective loss and expense experience to justify premium rates and closing and settlement fees and charges.
9	50	**Issue I:** Failing to follow rates on file with the Colorado Division of Insurance when issuing policies of insurance and/or using rates and/or rating rules not on file with the Colorado Division of Insurance.
10	62	**Issue J:** Adopting rate rules, premium charges and closing and settlement fees and charges which are excessive, unfairly discriminatory or which allow improper remuneration of producers of tittle insurance business.
11	67	**Issue K: Failure** to adopt and/or implement reasonable standards for the prompt investigation of claims.
12	68	**Issue L:** Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

SUMMARY OF RECOMMENDATIONS

for

EXAMINATION REPORT ON STEWART TITLE GUARANTY COMPANY

RECOMMENDATION NUMBER	PAGE NUMBER	TOPIC
13	74	**Issue M:** Misrepresenting pertinent facts or insurance policy provisions relating to the coverage at issue.
14	75	**Issue N:** Refusing to pay claims without conducting a reasonable investigation based upon all available information.
15	78	**Issue O:** Failure to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
16	81	**Issue P:** Failure to affirm or deny coverage of claims within a reasonable time after receipt of proof of loss.
17	84	**Issue Q:** Failure to produce and/ or maintain adequate records for market conduct review and/or failing implement Company claims handling procedures.
18	87	**Issue R:** Failure to file a Colorado Uniform Financial Reporting Plan and/or failure to submit an annual filing of sufficient financial data to justify Company rates.

EXAMINATION REPORT SUBMISSION

Independent Market Conduct Examiners
Duane G. Rogers, Esq.,
&
J. Reuben Hamlin, Esq.,
participated in this examination and in the preparation of this report.